### T

Vagueness

Aff conditionality

Can’t get links

Voter

### T: Human/PMCs 1NC (:45

#### “introducing armed forces into hostilities” only applies to human members and excludes civilian contractors like PMCs

in PMCs 2NC

Eric **Lorber**  UPenn Law School; Duke University - Department of Political Science March 1, **2013**, (Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?, University of Pennsylvania Journal of Constitutional Law, Vol. 15, No. 3, pp. 961, 2013, downloaded here <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2017036>)

C. The War Powers Resolution as Applied to Offensive Cyber Operations¶ As discussed above, critical to the application of the War Powers Resolution—especially in the context of an offensive cyber operation—are the definitions of key terms, particularly “armed forces,” as the relevant provisions of the Act are only triggered if the President “introduc[es armed forces] into hostilities or into situations [of] imminent . . . hostilities,”172 or if such forces are introduced “into the territory, airspace, or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces.”173 The requirements may also be triggered if the United States deploys armed forces “in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation.”174 As is evident, the definition of “armed forces” is crucial to deciphering whether the WPR applies in a particular circumstance to provide congressional leverage over executive actions. The definition of “hostilities,” which has garnered the majority of scholarly and political attention,175 particularly in the recent Libyan conflict,176 will be dealt with secondarily here because it only becomes important if “armed forces” exist in the situation. As is evident from a textual analysis,177 an examination of the legislative history,178 and the broad policy purposes behind the creation of the Act,179 “armed forces” refers to U.S. soldiers and members of the armed forces, not weapon systems or capabilities such as offensive cyber weapons. Section 1547 does not specifically define “armed forces,” but it states that “the term ‘introduction of United States Armed Forces’ includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government.”180 While this definition pertains to the broader phrase “introduction of armed forces,” the clear implication is that only members of the armed forces count for the purposes of the definition under the WPR. Though not dispositive, the term “member” connotes a human individual who is part of an organization.181 Thus, it appears that the term “armed forces” means human members of the United States armed forces. However, there exist two potential complications with this reading. First, the language of the statute states that “the term ‘introduction of United States Armed Forces’ includes the assignment of members of such armed forces.”182 By using inclusionary—as opposed to exclusionary— language, one might argue that the term “armed forces” could include more than members. This argument is unconvincing however, given that a core principle of statutory interpretation, expressio unius, suggests that expression of one thing (i.e., members) implies the exclusion of others (such as non- members constituting armed forces).183 Second, the term “member” does not explicitly reference “humans,” and so could arguably refer to individual units and beings that are part of a larger whole (e.g., wolves can be members of a pack). As a result, though a textual analysis suggests that “armed forces” refers to human members of the armed forces, such a conclusion is not determinative.¶ An examination of the legislative history also suggests that Congress clearly conceptualized “armed forces” as human members of the armed forces. For example, disputes over the term “armed forces” revolved around who could be considered members of the armed forces, not what constituted a member. Senator Thomas Eagleton, one of the Resolution’s architects, proposed an amendment during the process providing that the Resolution cover military officers on loan to a civilian agency (such as the Central Intelligence Agency).184 This amendment was dropped after encountering pushback,185 but the debate revolved around whether those military individuals on loan to the civilian agency were still members of the armed forces for the purposes of the WPR, suggesting that Congress considered the term to apply only to soldiers in the armed forces. Further, during the congressional hearings, the question of deployment of “armed forces” centered primarily on past U.S. deployment of troops to combat zones,186 suggesting that Congress conceptualized “armed forces” to mean U.S. combat troops.

#### violation- the aff restricts weapons systems and PMCs- not the “armed forces”

#### vote neg

#### Limits and ground- they justify the entire nukes topic, space weapons, missile defense, EMP, ASATs, bioweapons—civilian contractors justifies a host of agency affs like the coast guard which the neg can’t prepare for and avoid our links because they’re not “armed forces”

#### extra T- they restrict more than human members- that proves the resolution is insufficient and artificially inflates aff ground by letting them fiat through circumvention - reject the team or it’s a no risk option

#### Precision- they obscure the legal distinction between “armed forces” and “military departments”

**Chapman 1996** (Robert Foster, Senior Circuit Judge, WILLIE C. RANDALL v. UNITED STATES OF AMERICA 1996, http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=4th&navby=case&no=952504p)

Those courts have recognized the difference between the definition of the term "military departments" as used in 42 U.S.C. § 2000e-16 and the term "armed forces." Under this distinction, the term "military departments" includes only civilian employees of the Army, Navy, or Air Force; while the term "armed forces" refers to uniformed military personnel. 4 Gonzalez , 718 F.2d at 928. The court in Gonzalez reasoned that Congress recognized the difference between the two terms when it drafted section 717 to apply specifically to "military departments." The Gonzalez court found support for its interpretation of section 717 in the legislative history of the statute

### T: Prohibit 1NC (Short)

#### Restrictions on authority prohibit- the aff is a condition

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### independently they violate “introduce” - excludes reorganizing the military

Ely 88 – John Hart Ely, Professor of Law and Senior Research Fellow, Hoover Institution on War, Revolution, and Peace, Stanford University. November, 1988, "Suppose Congress Wanted a War Powers Act that Worked," 88 Colum. L. Rev. 1379, lexis nexis

INTERPRETATION OF THIS ACT¶ Sec. 7.(a) Authority to introduce United States Armed Forces into hostilities or into situations where there is an imminent danger of hostilities, or to retain them in a situation where hostilities or the imminent danger thereof has developed, shall not be inferred --¶ (1) from any provision of law, including any provision contained in any appropriation Act, unless such provision specifically authorizes such introduction or retention and states that it is intended to constitute specific statutory authorization within the meaning of this Act; or¶ (2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing such introduction or retention, and stating that it is intended to constitute specific statutory authorization within the meaning of this Act.¶ [\*1430] (b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.¶ (c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the **assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged**, or there exists an imminent threat that such forces will become engaged, in hostilities.

#### Vote neglimits - anything can indirectly affect war powers--also makes the topic bidirectional because conditions can enhance executive power and kills ground because they can spike out of war powers DAs

###  Legit 1NC (General) (:25

#### plan causes circumvention which kills legitimacy

Pushaw 4—Professor of law @ Pepperdine University [Robert J. Pushaw, Jr., “Defending Deference: A Response to Professors Epstein and Wells,” Missouri Law Review, Vol. 69, 2004] gender pronoun modified

Civil libertarians have urged the Court to exercise the same sort of judicial review over war powers as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the institutional differences, embedded in the Constitution, that have always led federal judges to review warmaking under special standards. Most obviously, the President can act with a speed, decisiveness, and access to information (often highly confidential) that cannot be matched by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, the judiciary by design acts far more slowly than either political branch. A court must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, by the time federal judges (particularly those on the Supreme Court) decide a case, the action taken by the executive is several years old. Sometimes, this delay is long enough that the crisis has passed and the Court’s detached perspective has been restored.57 At other times, however, the war rages, the President’s action is set in stone, and he will ignore any judicial orders that he conform his conduct to constitutional norms.58 In such critical situations, issuing a judgment simply weakens the Court as an institution, as Chief Justice Taney learned the hard way.59 Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court’s examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President’s actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62 This proposal intelligently blends a concern for individual rights with pragmatism. Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so and employs the least restrictive means to achieve that interest.63 Obviously, national security is a compelling governmental interest.64 Professor Wells’s crucial insight is that courts should not allow the President simply to assert that “national security” necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65 Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors—including highly sensitive intelligence that he does not wish to dis-close.66 Moreover, if the President’s response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President’s integrity and judgment? If so, what effect might such a judicial decision have on America’s foreign relations? These questions are worth pondering before concluding that “hard look” review would be an improvement over the Court’s established approach. Moreover, such searching scrutiny will be useless in situations where the President has made a wartime decision that ~~he~~ [they] will not change, even if judicially ordered to do so. For instance, assume that the Court in Korematsu had applied “hard look” review and found that President Roosevelt had wildly exaggerated the sabotage and espionage risks posed by Japanese-Americans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). If the Court accordingly had struck down FDR’s order to relocate them, he would likely have disobeyed it. Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in “pretend” review and stained its reputation by upholding the constitutionality of the President’s odious and unwarranted racial discrimination. I would agree. But I submit that the solution in such unique situations (i.e., where a politically strong President has made a final decision and will defy any contrary court judgment) is not judicial review in any form—ordinary, deferential, or hard look. Rather, the Court should simply declare the matter to be a political question and dismiss the case. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven, 67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility. Pg. 968-970

#### Legitimacy kills rule of law and compliance with decisions

Schapiro 8-5-’13, Robert A. Schapiro, dean and Asa Griggs Candler professor of law at Emory University School of Law., Op-ed contributor, Christian Science Monitor, Objection! Americans' opinion of Supreme Court can't keep dropping, Lexis, jj

Public confidence in the judiciary provides a critical foundation for a society committed to the rule of law. As America's unelected justices confront controversial questions, the legitimacy of their decisions depends on public support for the institution. The court must rely on other government officials, including elected leaders and law enforcement officers, to implement its rulings. Examples around the world suggest that obedience to judicial decisions may well depend on the level of respect that the courts enjoy.

**rule of law solves global instability**

**Feldman ‘8** [Noah Feldman, a contributing writer for the magazine, is a law professor at Harvard University and an adjunct senior fellow at the Council on Foreign Relations, “When Judges Make Foreign Policy”, NEW YORK TIMES, 9—25—08, www.nytimes.com/2008/09/28/magazine/28law-t.html]

Looking at today’s problem through the lens of our great constitutional experiment, it emerges that there is no single, enduring answer to which way the Constitution should be oriented, inward or outward. The truth is that we have had an inward- and outward-looking Constitution by turns, depending on the needs of the country and of the world. Neither the text of the Constitution, nor the history of its interpretation, nor the deep values embedded in it justify one answer rather than the other. In the face of such ambiguity, the right question is not simply in what direction does our Constitution look, but where do we need the Constitution to look right now? Answering this requires the Supreme Court to think in terms not only of principle but also of policy: to weigh national and international interests; and to exercise fine judgment about how our Constitution functions and is perceived at home and abroad. The conservative and **liberal approaches to legitimacy and the rule of law need to be supplemented with a healthy dose of real-world pragmatism**. In effect, the fact that the Constitution affects our relations with the world requires the justices to have a foreign policy of their own. On the surface, it seems as if such inevitably political judgments are not the proper province of the court. If assessments of the state of the world are called for, shouldn’t the court defer to the decisions of the elected president and Congress? Aren’t judgments about the direction of our country the exclusive preserve of the political branches? Indeed, the Supreme Court does need to be limited to its proper role. But when it comes to our engagement with the world, that role involves taking a stand, not stepping aside. The reason for this is straightforward: the court is in charge of interpreting the Constitution, and the Constitution plays a major role in shaping our engagement with the rest of the world. The court therefore has no choice about whether to involve itself in the question of which direction the Constitution will face; it is now unavoidably involved. Even choosing to defer to the other branches of government amounts to a substantive stand on the question. That said, when the court exercises its own independent political judgment, it still does so in a distinctively legal way.For one thing, the court can act only through deciding the cases that happen to come before it, and the court is limited to using the facts and circumstances of those cases to shape a broader constitutional vision. The court also speaks in the idiom of law — which is to say, of regular rules that apply to everyone across the board. It cannot declare, for instance, that only this or that detainee has rights. It must hold that the same rights extend to every detainee who is similarly situated. This, too, is an effective constraint on the way the court exercises its policy judgment. Indeed, it is this very regularity that gives its decisions legitimacy as the product of judicial logic and reasoning. Why We Need More Law, More Than Ever So what do we need the Constitution to do for us now? The answer, I think, is that the Constitution must be read to help us remember that while the war on terror continues, we are also still in the midst of a period of rapid globalization. An enduring lesson of the Bush years is the extreme difficulty and cost of doing things by ourselves. **We need to build and rebuild alliances — and law has** historically **been** one of **our best tool**s for doing so. In our present precarious situation, **it would be a** terrible **mistake to abandon our** historic **position of leadership in the g**lobal **spread of** the **rule of law. Our leadership** matters for reasons both universal and national. Seen from the perspective of the world, **the fragmentation of power** after the cold war **creates** new dangersof disorder that need to be mitigated by the sense of regularity and predictability **that only the rule of law can provide. Terrorists need to be deterred. Failed states need to be brought under the umbrella of international organizations so they can govern themselves. And economic interdependence demands coordination, so that the collapse of one does not become the collapse of all**. From a national perspective, our interest is less in the inherent value of advancing individual rights than in claiming that our allies are obligated to help us by virtue of legal commitments they have made. The Bush administration’s lawyers often insisted that lawwas a tool of the weak, and that therefore as a strong nation we had no need to engage it. But this notion of “lawfare” as a threat to the United States is based on a misunderstanding of the very essence of how law operates. **Law** comes into being and is sustained not because the weak demand it but because it is a tool of the powerful — as it has been for the United States since World War II at least. The reason those with power prefer law to brute force is that it **regularizes and legitimates the exercise of authority. It is easier and cheaper to get the compliance of weaker** people or **states by promising them rules** and a fair hearing **than by threatening them constantly with force.** After all, if those wielding power really objected to the rule of law, they could abolish it, the way dictators and juntas have often done the world over.

### Minimalism 1NC

#### minimalism now- the aff’s ruling on war powers flip that, kills bizcon

Scott 8 (Henry T, J.D. candidate 2008, Georgetown University Law Center; B.A., history and political science, 2005, University of Notre Dame. Mr. Scott is the Editor-in-Chief of the Georgetown Journal of Law & Public Policy, “Burkean Minimalism and the **Roberts** Court's Docket”, The Georgetown Journal of Law & Public Policy, Summer, Lexis)

Both the minimalist Roberts and the visionary Scalia alike, then, take a more restricted view of the judiciary's role in our constitutional democracy. In contrast to the "equitable" solutions to societal problems crafted by the Warren and Burger Courts, [n160](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n160) the present court seems obsessed with the limits of its jurisdiction. Jurisdictionally, the Supreme Court rests on firmest ground when it decides business disputes of national import: "real disputes" over "real dollars." Historically, business disputes dominated the docket. And perhaps not without good reason: not only do businesses need clear rules on which to base their decisions, standing may be easier to show when judicial resolution affects business's bottom-line. Thus, Burkean minimalists may prefer to entertain business disputes because such matters--like criminal prosecutions--exist within the traditional judicial domain and their resolution has profound and immediate impact upon litigants. As Part Two detailed, for most the Supreme Court's history, diversity jurisdiction comprised the overwhelming majority of the Supreme Court's docket. Whereas the Court today may be less interested in enforcing contractual debt obligations between parties of different states, the business disputes dominating the Robert's Court docket involve issues of corporate federalism, securities, and antitrust law. As in the diversity disputes of yore, clear legal rules are needed in matters related to corporate, securities, and antitrust law if modern business is to thrive. The Court seems to understand business's need. In the area of antitrust alone, the Supreme Court issued four decisions in the past term, in addition to three in the previous term. [n161](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n161) Decisions in Independent Ink [n162](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n162) and Leegin [n163](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n163)  [\*778]  have helped "clean up" antitrust law. [n164](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n164) The Roberts Court has committed itself to the rigorous application of price theory and the centrality of empiricism in field of antitrust, an area of the law where the Court has considerable interpretative discretion and the capacity to affect business. [n165](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n165) The Court has strived to design optimal rules consistent with Congress's rather open-ended statutory regime that are respectful of traditional property rights as well as the value of a competitive marketplace. [n166](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n166) The Court's foray into antitrust law--its "cleaning up" broadly criticized precedents--was Burkean to the extent that the court intervened in order to align the law with the prevailing consensus among economists, even if it overruled established law. Thus, both the Roberts Court's predilection for business disputes and its handling of antitrust cases exhibit typically Burkean behavior. The Court crafted legal rules capable of guiding behavior in a manner consistent with society's prevailing (economic) standards, and it resolved a live dispute in the process. Evidence of the Court's adoption of a Burkean judicial philosophy also arises in matters unrelated to business disputes. Bowles v. Russell, [n167](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n167) a case much maligned by liberals from the October 2006 term, may help us to understand recurring themes animated by the Court's judicial philosophy. In Bowles, a District Court judge purported to extend the defendant's time for filing an appeal, beyond the period allowed by statute. [n168](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n168) In affirming a Sixth Circuit decision rejecting petitioner's reliance argument, the Court, per Justice Thomas, observed that "the taking of an appeal within the prescribed time is mandatory and jurisdictional." [n169](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n169) In a remarkable statement of judicial modesty, the Court distinguished court-made rules from jurisdictional requirements, declaring that "this Court has no authority to create equitable exceptions to jurisdictional requirements." [n170](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n170) The holding of Bowles, then, with its respect for "limits enacted by Congress" evidences a new deference to the politically accountable organs of government and an increased willingness to employ the passive virtues; it may also portend a return to the rule of law and a law of rules. In part because of earlier courts' forays into the moral and political thicket, the Roberts Court cannot avoid difficult moral, social, and political questions altogether. Still, when confronted with sensitive subjects wherein the judiciary is arguably the inappropriate forum, the Roberts Court has proceeded deliberately, carefully, and methodically. Moreover, its reasoning has displayed an  [\*779]  arguably Burkean approach, one that is deferential to established traditions, constitutional commands, and society's values. It has not shirked from its responsibility to protect the Constitution's explicit guarantees, especially in matters related to Fourteenth Amendment Equal Protection, [n171](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n171) but neither has it plunged itself deeper into the abyss of substantive due process. In FEC v. Wisconsin Right to Life, for example, the Court reaffirmed recent precedent upholding the Bipartisan Campaign Reform Act (BCRA), but formulated an as-applied exception to the law's ban on issue ads in the days leading up to an election. [n172](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n172) Chief Justice Roberts's controlling opinion and Justice Alito's concurrence evidenced a modest middle ground: one respectful of both fundamental First Amendment values (free speech) and Congress's authority to promote the general welfare through elections that are free from the corrupting influence of money. In a concurring opinion, Justice Scalia criticized the Court for not going further. [n173](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n173) Ultimately, though, the Court's incremental "reversal" of McConnell [n174](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n174) (which had upheld BCRA against a facial challenge) evidences a more restrained approach, and certainly one more deferential to the wishes of Congress. Similarly, the Court's decision in Parents Involved in Community Schools v. Seattle School District No. 1 [n175](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n175) (Seattle Schools) should be understood as a straight-forward application of long-established Equal Protection Clause jurisprudence, rather than as a "roll back" of civil rights protections for minorities. [n176](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n176) Understood contextually, the Court's intervention was neither surprising nor "activist." In Seattle Schools, the Court faced a split among lower courts. Courts in the Fifth and Sixth Circuits "appeared to be following the pre-Grutter line of cases condemning racial balancing" while the First and Ninth Circuits permitted racial balancing to increase diversity in public schools. [n177](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n177) Faced with a circuit split on an issue of clear national importance, the Court granted certiorari, and then rejected the invitation to change its equal protection jurisprudence. Applying strict-scrutiny review, the Court refused to find that racial classifications are constitutional if they reflect reasonable efforts by government officials to address problems of racial imbalance. Viewed in this light, the decision in Seattle Schools is classically Burkean, arising as it does in a field in which the Court has a clear responsibility to "say what the law is." After all, the Fourteenth Amendment is an explicit grant of power to the federal government, designed to  [\*780]  prevent states from according differential treatment on the basis of race. [n178](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n178) Even the Roberts' Court approach to abortion jurisprudence has arguably been Burkean. In Gonzales v. Carhart, [n179](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n179) for example, the Court upheld Congress's power to ban partial birth abortion. [n180](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n180) By deferring to both (1) the moral judgment of the overwhelming majority of legislators and (2) Congressional findings that partial birth abortion is never necessary to preserve the health of the mother, the Court exercised restraint rather than activism. Even Justices Thomas and Scalia exercised a restraint of sorts, refusing to strike down the law on commerce clause grounds, noting that the parties did not raise or brief that issue. [n181](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n181) Furthermore, despite the Carhart dissenters' criticism that the "Court . . . is hardly faithful to . . . earlier invocations of 'the rule of law' and the 'principles of stare decisis'" [n182](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n182) the specific issue in Carhart was not controlled by the related partial-birth-abortion case, Stenberg. [n183](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n183) Congress drafted the Partial-Birth Abortion Ban Act of 2003 to remedy the deficiencies of the law in Stenberg. [n184](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n184) Regardless of whether or not Carhart was faithful to recent precedent by approving a restriction on an abortion procedure without an exception for the health of the mother, at least incrementally, the decision challenged the interventionist approach of Roe because it respected a political solution to a divisive moral problem. In so doing, the Court accepted the "State's interest in promoting respect for human life at all stages in the pregnancy." [n185](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n185) This cautioned, deferential approach may ultimately guide the Court out of the moral and political thicket it entered nearly a half-century ago. The Court's denial of some prominent certiorari petitions may also foreshadow a less ambitious, more deferential Supreme Court. In the October 2004 term, for example, the Court rejected five petitions of certiorari on Commerce Clause challenges to environmental law. [n186](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n186) More recently, the Court has declined to hear appeals in a prominent Bible-monument case (Harris County, Texas v. Staley), [n187](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n187) a celebrated torture appeal involving a German citizen of Lebanese descent who claims to have been abducted and tortured by U.S.  [\*781]  agents (El Masri v. United States), [n188](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n188) and an appeal from a decision upholding Michigan's Family Independence Agency's refusal to fund a faith-based organization for abused, neglected, and delinquent children (Teen Ranch, Inc. v. Udow). [n189](http://www.lexisnexis.com.proxy.uchicago.edu/us/lnacademic/frame.do?tokenKey=rsh-20.931117.153481533&target=results_DocumentContent&reloadEntirePage=true&rand=1253810035038&returnToKey=20_T7423140310&parent=docview" \l "n189) While it is beyond the scope of this paper to analyze certiorari denials, the willingness of the Court to stay its hand with respect to challenges to environmental regulation, presidential power and state secrets, and divisive issues associated with church/state relations is consistent with the certiorari granting behavior one would expect from a more deferential and deliberate, Burkean minimalist institution.

#### Bizcon key to the Economy

John Braithwaite, Australian Research Council Federation fellow, 2004, The Annals of The American Academy of Political and Social Science, March, “Emancipation and Hope,” Lexis

The challenge of designing institutions that simultaneously engender emanci- pation and hope is addressed within the assumption of economic institutions that are fundamentally capitalist. This contemporary global context gives more force to the hope nexus because we know capitalism thrives on hope. When business confidence collapses, capitalist economies head for recession. This dependence on hope is of quite general import; business leaders must have hope for the future before they will build new factories; consumers need confidence before they will buy what the factories make; investors need confidence before they will buy shares in the company that builds the factory; bankers need confidence to lend money to build the factory; scientists need confidence to innovate with new technologies in the hope that a capitalist will come along and market their invention. Keynes’s ([1936]1981) General Theory of Employment, Interest and Money lamented the theoretical neglect of “animal spirits” of hope (“spontaneous optimism rather than . . . mathematical expectation” (p. 161) in the discipline of economics, a neglect that continues to this day (see also Barbalet 1993).

#### nuclear war

Auslin 09 (Michael, Resident Scholar – American Enterprise Institute, and Desmond Lachman – Resident Fellow – American Enterprise Institute, “The Global Economy Unravels”, Forbes, 3-6, http://www.aei.org/article/100187)

What do these trends mean in the short and medium term? The Great Depression showed how social and global chaos followed hard on economic collapse. The mere fact that parliaments across the globe, from America to Japan, are unable to make responsible, economically sound recovery plans suggests that they do not know what to do and are simply hoping for the least disruption. Equally worrisome is the adoption of more statist economic programs around the globe, and the concurrent decline of trust in free-market systems. The threat of instability is a pressing concern. China, until last year the world's fastest growing economy, just reported that 20 million migrant laborers lost their jobs. Even in the flush times of recent years, China faced upward of 70,000 labor uprisings a year. A sustained downturn poses grave and possibly immediate threats to Chinese internal stability. The regime in Beijing may be faced with a choice of repressing its own people or diverting their energies outward, leading to conflict with China's neighbors. Russia, an oil state completely dependent on energy sales, has had to put down riots in its Far East as well as in downtown Moscow. Vladimir Putin's rule has been predicated on squeezing civil liberties while providing economic largesse. If that devil's bargain falls apart, then wide-scale repression inside Russia, along with a continuing threatening posture toward Russia's neighbors, is likely. Even apparently stable societies face increasing risk and the threat of internal or possibly external conflict. As Japan's exports have plummeted by nearly 50%, one-third of the country's prefectures have passed emergency economic stabilization plans. Hundreds of thousands of temporary employees hired during the first part of this decade are being laid off. Spain's unemployment rate is expected to climb to nearly 20% by the end of 2010; Spanish unions are already protesting the lack of jobs, and the specter of violence, as occurred in the 1980s, is haunting the country. Meanwhile, in Greece, workers have already taken to the streets. Europe as a whole will face dangerously increasing tensions between native citizens and immigrants, largely from poorer Muslim nations, who have increased the labor pool in the past several decades. Spain has absorbed five million immigrants since 1999, while nearly 9% of Germany's residents have foreign citizenship, including almost 2 million Turks. The xenophobic labor strikes in the U.K. do not bode well for the rest of Europe. A prolonged global downturn, let alone a collapse, would dramatically raise tensions inside these countries. Couple that with possible protectionist legislation in the United States, unresolved ethnic and territorial disputes in all regions of the globe and a loss of confidence that world leaders actually know what they are doing. The result may be a series of small explosions that coalesce into a big bang.

**Carbon Tax**

**Text: The United States federal government should implement a phased, revenue-neutral carbon fee and dividend on all domestic production and importation of coal, petroleum, and natural gas. The United States federal government should propose an international treaty to regulate bioweapons and nanotech development. The united states federal government should announce and implement a commitment to a national energy efficiency strategy**

**Carbon tax could be implemented immediately – solves warming and restores US negotiating credibility ensuring international action**

**Avi-Yonah& Uhlmann ’9** (Reuven S. Avi-Yonah is the Irwin I. Cohn Professor of Law and the Director of the International Tax LLM Program at the University of Michigan Law School; David M. Uhlmann is the Jeffrey F. Liss Professor from Practice and the Director of the Environmental Law and Policy Program at the University of Michigan Law School, “Combating Global Climate Change: Why a Carbon Tax Is a Better Response to Global Warming Than Cap and Trade”, Feb, 28 Stan. Envtl. L.J. 3, lexis, )

**A** more **efficient and effective market-based approach to reduce carbon dioxide emissions would be a carbon tax imposed on** [\*7] **all coal, natural gas, and oil produced domestically or imported into the U**nited **S**tates. **A carbon tax would** enable the market to account for the societal costs of carbon dioxide emissions and thereby **promote emission reductions**, just like a cap and trade system. **A carbon tax would be easier to implement and enforce**, however, **and simple**r **to adjust if the resulting market-based changes were either too weak or too strong.** A carbon tax also would produce revenue that could be used to fund research and development of alternative energy and tax credits to offset any regressive effects of the carbon tax. **Because a carbon tax could be implemented and become effective almost immediately, it would be a much quicker method of reducing greenhouse gas emissions** than a cap and trade system. In addition, **because a carbon tax could be effective in advance of any international treaty regarding greenhouse gas emissions, a carbon tax would provide the U**nited **S**tates **much needed credibility in the negotiations over international carbon dioxide limits**. **A carbon tax could** then supplement an international cap and trade system, combine with emission caps in an international hybrid "cap and tax" approach, or **become the focal point for the next international treaty to address global climate change**.

**CP will be modeled globally – solves warming**

**Handley ’9** (James Handley, chemical engineer and attorney who previously worked in the private sector and for the Environmental Protection Agency, March 11, “Imagine: A Harmonized, Global CO2 Tax”, Carbon Tax Center, <http://www.carbontax.org/blogarchives/2009/03/11/imagine-a-harmonized-global-co2-tax/>, )

“For more than 20 years, I have supported a CO2 tax, offset by an equal reduction in taxes elsewhere. However, a cap-and-trade system is also essential and actually offers a better prospect for a global agreement, in part because it is difficult to imagine a harmonized global CO2 tax. Moreover, I have long recognized that our political system has special difficulty in considering a CO2 tax even if it is revenue neutral.” — Al Gore, quoted in New York Times, House Bill for a Carbon Tax to Cut Emissions Faces a Steep Climb, March 7.

Let’s examine Mr. Gore’s points:

Harmonization: Mr. Gore has raised a crucial concern: **Any carbon-reduction policies the U.S. enacts must quickly go global**. Acting alone or counter to other nations’ efforts will not suffice.

containership\_pbo31\_1.jpgIn their seminal report last February, “Policy Options for Reduction of CO2 Emissions,” Peter Orszag (now Budget Director) and Terry Dinan of the Congressional Budget Office meticulously compared cap-and-trade with carbon tax options. They concluded that **a carbon tax would reduce emissions five times more efficiently**, primarily because of price volatility under a fixed cap.

**CBO had no difficulty “imagining a harmonized global carbon tax**.” Chapter 3 of the Orszag-Dinan report, “International Consistency Considerations,” describes straightforward ways to harmonize carbon taxes. If nations choose different carbon tax rates, border tax adjustments permitted under World Trade Organization rules authorize higher-taxing nations to enact tariffs to equalize tax rates on imported products to the same levels applied to similar domestically-produced products.

Indeed, Rep. John Larson’s new carbon tax bill employs precisely this strategy. In effect, **the U.S. would collect and retain the revenue generated by equalizing carbon taxes on products imported from countries that haven’t enacted their own or whose carbon tax rate is lower than ours. That will provide a powerful incentive for our trading partners to follow our lead**.

### Hostilkities PIC

#### United States Federal Judiciary should substantially increase National Environmental Policy Act restrictions on military activity outside of hostilities, and distinguish the ruling from introduction of armed forces into hostilities because of the political question doctrine.

#### CP PICs out of “Hostilities”- 2 net benefits:

#### aff kills flexibility in introducing forces into “hostility”- causes extinction

John Yoo, Professor, Law, UC-Berkeley, CRISIS AND COMMAND, 2009, p. 329-330.

FDR’s second challenge became another constant of the postwar world. The Soviet Union replaced Germany and Japan as the central national security threat – its nuclear weapons could have destroyed the United States in minutes, it enjoyed superiority in conventional forces, and it could project its influence globally. FDR’s successors did not have to worry about isolationism. Truman convinced Congress to cooperate in placing the United States in a permanent state of mobilization, unprecedented in American history, to counter the Soviet threat. His successors kept the United States committed to the strategy of containment over a period far longer – 45 years – than any “hot” war. While they sometimes turned to Congress for support, Presidents continued to dispatch the military into hostilities abroad on their authority, a prospect with even more dangerous consequences in a nuclear age. During the Cold War, the United States transformed its role from the arsenal of democracy to the guardian of the free world. Without recognizing broad constitutional powers in the Presidency, the United States could not have prevailed, and without Congress’s consistent provision of resources for the military and security agencies, the Presidents could not have succeeded. ¶ For guiding the nation safely through an existential threat unlike any the United States had ever faced, Presidents Truman, Eisenhower, and Regan rank among our ten greatest Presidents. This pattern has mistakenly led some to believe that war produces great Presidents. Not all Presidents, however, were up to the challenge of the Cold War. President Kennedy found his moment in the Cuban Missile Crisis but led the nation into Vietnam, where Lyndon Johnson’s ambitions foundered.

#### 2. ruling on hostilities uniquely kills the PQD

Litwak ‘12

Brian, JD candidate at UNC, "Putting Constitutional Teeth Into aPaper Tiger: How to Fix the War PowersResolution," American University National Security Law Brief, Vol. 2, No. 2, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1034&context=nslb>

A. The Political Question Doctrine

First announced by the Supreme Court in Baker v. Carr, 35 the political question doctrine holds that certain categories of disputes are nonjusticiable or inappropriate for the courts to hear.36 In the arena of foreign affairs, courts have been especially willing to decline to adjudicate cases, invoking the political question doctrine where the court lacks the “institutional capacity to handle certain matters.”37 In Crockett v. Reagan, 38 twenty-nine members of Congress sought declaratory judgment against the President for supplying military equipment and aid to the government of El Salvador in violation of the WPR.39 The President claimed that the military personnel sent to El Salvador were performing a limited training and advisory function for the El Salvadorian military and, therefore, were not engaged in “hostilities” as contemplated in Section 1543(a)(1).40 The plaintiffs painted a different picture, claiming the military personnel were planning specific operations and working in areas exposed to heavy combat.41 The United States District Court for the District of Columbia dismissed the case as nonjusticiable, concluding that the factfinding necessary to determine whether U.S. forces were introduced into hostilities was “appropriate for congressional, not judicial, investigation and determination.”42 Relying on Baker, the court categorized the case as one “characterized by a lack of judicially discoverable and manageable standards for resolution.”43 Less than a year later, the United States District Court for the District of Columbia dismissed another alleged violation of the WPR on identical grounds.44 Pertaining to U.S. sponsored paramilitary activities in Nicaragua, the court dismissed the suit, holding that it “lack[ed] judicially discoverable and manageable standards for resolving the dispute presented.”45 Courts have reaffirmed this position on numerous occasions. In Lowry v. Reagan, 46 the plaintiffs (comprising 113 members of Congress) suffered a similar fate. The court, asked to decide if U.S. actions in the Persian Gulf constituted “hostilities,” declined to exercise jurisdiction over the claims, again citing the political question doctrine. The court held: “[W]ith regard to cases concerning foreign relations, that these matters often ‘lie beyond judicial cognizance’ due [sic] the need for a ‘single-voiced statement of the Government’s views.’”47 As noted in Sanchez-Espinoza, 48 the court’s refusal to decide the questions of hostilities was prompted, in part, due to the risk of the “potentiality of embarrassment [resulting] from multifarious pronouncements by various departments on one question.”49 When a court is faced with an elusive set of facts concerning foreign affairs and differing positions on the presence of “hostilities” presented by the President and Congress, it will dismiss the dispute as nonjusticiable under the guise of the political question doctrine. The court’s exercise of the political question doctrine, excusing itself from deciding the differing positions of the Executive and Congress, combines multiple aligning considerations. First, as a practical matter, courts lack the institutional capacity to decide the presence of hostilities.50 Second, the Constitution delegates foreign affairs decisions to the two political branches, not the courts.51 Third, deciding the issue of hostilities in foreign affairs would take the courts into “uncharted legal terrain,” where no law exists and applicable standards are wanting.52 Given the omission of a definition of “hostilities” in the WPR53 and the absence of a workable legal standard, courts would have an extremely difficult time navigating this “uncharted terrain” in foreign affairs. Consequently, courts have opted to leave the resolution of the disputes to those elected branches both capable and constitutionally committed to making decisions concerning the use of force abroad.54 Although not the only tool invoked by courts to skirt tough decisions concerning the separation of war powers,55 the political question doctrine is an oft-accepted argument by courts in justifying the dismissal of claims made pursuant to the WPR.56

**Causes litigation that shutters DOD contracting**

David **Isenberg**, research fellow, Independent Institute, “Contractor Legal Immunity and the Political Question Doctrine,” Cato Institute, 1—19—**10**, [www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine](http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine)

**One can easily see why** most **defense contractors**, including private military and security firms working under U.S. government contract, **would like to prevent such suits from proceeding**. The sheer number of injuries alone gives them reason to want to avoid possible suits. According to ProPublica as of last September 30 the number of private contractors injured in Iraq and Afghanistan totaled 37,652. Of course, not all those injuries are the result of something done wrong. But **even a small fraction** of them **would entail considerable legal costs for a contractor** so it is easy to understand why they would want to preventing such suits from being filed in the first place. As I am not a lawyer the following is derived from Maj. Carter’s article. Traditionally, **the reason given for this is that such cases may involve “political questions” that the Judicial Branch is ill-equipped to decide**. Thus **defense contractor advocates claim these actions must be dismissed**, else there be grim consequences for Government contingency contracting. But according to Maj. Carter, “the recent developments in political question doctrine case law are significant to the future of Government contingency contracting. However, they are not catastrophic — although portrayed as such by some defense contractor advocates. There will not be an explosion of contracting costs passed on to the Government. There will not be a mass refusal of defense contractors to accept contingency contracts. There will not be chaos on the battlefield. Such predictions are nothing more than “bellowing bungle.” Carter wrote: **What is the political question doctrine?** According to Chief Justice John Marshall, “[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in [the U.S. Supreme Court].” In 2004, **the Court held** “[s]ometimes .. . the law is that **the judicial department has no business entertaining [a] claim of unlawfulness** — because the question is entrusted to one of the political branches or involves no judicially enforceable rights. **Such questions are said to be ‘nonjusticiable,’ or ‘political questions.**’” What this means is that **traditionally courts have deferred to the political branches in matters of foreign policy and military affairs**. **Policy decisions regarding the employment of U.S. military forces** **in combat belong to the political branches**, **not the courts**. The Supreme Court has held that, due to their “complex, subtle, and professional” nature, **decisions as to the** “composition, training, equipping, and **control of a military force” are “subject always” to the control of the political branches**. Tort **suits that challenge the internal operations of these areas of the military are likely to be dismissed as political questions**. Yet, notwithstanding the foregoing prohibitions on judicial conduct, the Supreme Court has cautioned, “it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” As mentioned earlier, vast precedent exists for judicial involvement in foreign and military affairs. Case law establishes that military decisions are reviewable by federal courts. An assertion of military necessity, standing alone, is not a bar to judicial action. Merely because a dispute can be tied in some way to combat activities does not prevent a court from reviewing it. Although an action arises in a contingency environment, if a case is essentially “an ordinary tort suit” it is well within the competence of the courts to entertain. Courts have underscored the point: no litmus test exists that prohibits judicial action merely because an issue involves the military in some fashion. Where plaintiffs seek only damages and not injunctive relief, such cases are “particularly judicially manageable.” When such a damages-only lawsuit concerns only a defense contractor (as opposed to the Federal Government), courts have held that such actions do not involve “overseeing the conduct of foreign policy or the use and disposition of military power.” Thus, those actions are less likely to raise political questions than suits against the Government, suits seeking injunctive relief, or both. Given the enormous amount of money involved in Government contingency contracting and the correspondingly large number of contractors and contractor employees performing GWOT (Global War on Terror) contingency contracts, the number of plaintiffs seeking redress for tortious conduct was certain to rise — and it did. Universally, **defendant defense contractors invoked the political question doctrine in order to shield themselves from liability in their performance of GWOT contracts**, some with more success than others. The first significant case centered around the tragic events at the Abu Ghraib prison in Iraq. In Ibrahim v. Titan Corp., Iraqi plaintiffs alleged they were tortured, raped, humiliated, beaten, and starved while in U.S. custody. Apparently fearing a dismissal on sovereign immunity grounds if they sued the U.S. Government, the plaintiffs instead chose to name as defendants the contractors who provided interpreters and interrogators for the prison. The defendants filed a motion to dismiss, alleging the matter involved political questions. The court held the case should not be dismissed at such an early stage on political question grounds, especially because the United States was not a party to the case. Ibrahim is significant because it was the first GWOT case to underscore the need for full factual development of a case prior to an assessment of justiciability. One particularly interesting point in Carter’s article is this: Judges and scholars openly speculate about the possible consequences of defense contractor tort liability on the federal procurement process. In Boyle, **the Supreme Court warned that “[t]he financial burden of judgments against** [] **contractors would ultimately be passed through**, substantially if not totally, to the United States itself, **since defense contractors will predictably raise their prices to cover**, or to insure against, contingent liability … .” Since private military contracting advocates claim that their firms are more cost effective than the government one might reasonably believe that they can be so only by preventing tort suits against them. **If the cost of such suits were factored in, the presumed** cost **effectiveness** **could** conceivably **be significantly less**, **or perhaps not exist at all**. Carter asks “is the situation really this dire? Are contractors at a point where, because of increased litigation risks, they will be forced to charge the Government more for their services or elect to not provide services altogether?” **The answers may not be far away**. **In November 2008**, **Joshua Eller filed suit** in the U.S. District Court for the Southern District of Texas, as a result of injuries he suffered at Balad Air Base, Iraq, while deployed as a contractor employee of KBR from February to November of 2006. The complaint alleges defendants KBR and Halliburton “intentionally and negligently exposed thousands of soldiers, contract employees and other persons to unsafe water, unsafe food, and contamination due to faulty waste disposal systems … .” The complaint also includes allegations of injury from toxic smoke which emanated from an open air burn pit at Balad. The complaint alleges approximately 1,000 other individuals suffered similar injuries and it seeks to combine all of those actions into a single class action lawsuit. More significantly, **this action is only one of several suits currently pending that relate to similar KBR activities in Iraq**. **The political question doctrine will be a major factor in this coming storm of litigation**. **With the large number of potential plaintiffs compounded by the seriousness of the conduct and injuries alleged, these suits have the potential to dwarf the damages awards previously sought in earlier GWOT cases**. Undoubtedly, **KBR will seek to raise the political question doctrine as an absolute bar** to these and any similar suits. **Defense contractor advocates warn of “deleterious effects” to the mission and the contractor**-military **relationship if tort suits against war zone defense contractors are allowed to proceed**. **They argue such tort claims “frustrate” and “conflict with” the Government’s ability to control contingency operations and would result in compromised logistical support and mission jeopardy**. Furthermore, **many companies**, especially smaller ones, **could be deterred from seeking contingency contracts**. For those contractors who do elect to proceed, they will seek to insulate themselves from liability by either self-insuring or obtaining insurance coverage, if it is available. The argument continues that such costs will then be passed onto the Government in the form of higher contract prices. But, most alarmingly, some **defense contractor advocates claim the impact of such suits “would be far more profound than financial**” **and defense contractors may**, out of a fear of being sued, **refuse to follow the military’s instructions altogether**.

**Key to irregular warfighting**

David A. **Wallace**, Col., U.S. Army and deputy head, Department of Law, USMA, “The Future Use of Corporate Warriors with the U.S. Armed Forces: Legal, Policy, and Practice concerns,” 20**09**, <http://www.dau.mil/pubscats/PubsCats/Wallace.pdf>

It is apparent that private security **contractors possess** a number of these **important capabilities** and characteristics. **In t**erms of **attributes that would make them a force multiplier** for future conflicts, **private security contractors can be adaptable/tailored, precise, fast, agile, and lethal. The government**, for example, **can expand, shrink, and refine the** contractor **workforce** structure very **quickly** by means of solicitation and statement of work process. Highly **skilled contractors can be retained to execute a contract on an ad hoc basis in whatever numbers the government needs** to acc

ompany the armed forces or other government entities to address a wide ranging array of security concerns. Additionally, procurement **officials** may use a variety of legal authorities and contract types to **award** such contracts **quickly and efficiently, and terminate them immediately** at the conflict's end, **with no back-end retirement or medical costs** to the government. **Within the military** force structure, however, **it** often takes years to make significant changes. After consideration of the nature of the future security challenges (i.e., irregular, disruptive, traditional, and catastrophic), it does not take much imagination to envision how private security contractors could augment U.S. forces in a variety of scenarios. The United States could, for example, use armed contractors with the appropriate skill sets to provide a continuum of services. For example, **contractor personnel could serve as peacekeepers** or peacemakers (e.g., support U.S. efforts in conflicts like Darfur); locate, tag, and **track terrorists; secure** critical **infrastructure**, lines of communication, and potential high-value targets; **and assist** in **foreign internal defense**. Moreover, private security contractors could arguably be used as a constabulary force during a military occupation or during stability and support operations. **Given** that a number of private security **firms employ highly skilled former special operations personnel**, it is readily foreseeable that **contractors could add value to special operations forces** as they work to **meet** the challenges of **irregular conflicts or catastrophic challenges**. Furthermore, **in a resource-constrained environment**, private security contractors have an intuitive appeal. The **government can hire** the armed security contractors **only when needed**. Their services can be terminated at the convenience of the government when the contingency ends; contractors can also be terminated for default if they fail to perform. The contractual **agreements can specify** the **skill sets** necessary to satisfy the government's requirements. In sum, security contractors offer important capabilities and attributes that potentially make them an attractive option for future strategic planners. There are, however, significant risks and concerns associated with using private security contractors to augment the future force.

#### Extinction

John **Bennett**, “JFCOM Releases Study on Future Threats,” DEFENSE NEWS, 12—4—**08**, www.defensenews.com/story.php?i=3850158

The study predicts **future U.S. forces' missions will range "from regular and irregular wars in remote lands, to relief and reconstruction** in crisis zones, to sustained engagement in the global commons." Some of these missions will be spawned by "rational political calculation," others by "uncontrolled passion." And future foes will attack U.S. forces in a number of ways. "Our enemy's capabilities will range from explosive vests worn by suicide bombers to long-range precision-guided cyber, space, and missile attacks," the study said. "The threat of **mass destruction - from nuclear, biological, and chemical weapons - will likely expand from stable nation-states to less stable states** and even non-state networks." The document also echoes Adm. Michael Mullen, chairman of the Joint Chiefs of Staff, and other U.S. military leaders who say America is likely in "an era of persistent conflict." During the next 25 years, it says, "There will continue to be those who will hijack and exploit Islam and other beliefs for their own extremist ends. **There will continue to be opponents who will try to disrupt** the **political stability and deny** the free access to **the global commons** that is **crucial to the world's economy**." The study gives substantial ink to what could happen in places of strategic import to Washington, like Russia, China, Africa, Europe, Asia and the Indian Ocean region. Extremists and Militias But it calls the Middle East and Central Asia "the center of instability" where U.S. troops will be engaged for some time against radical Islamic groups. **The study does not rule out a fight against a peer nation's military, but stresses preparation for irregular foes** like those that complicated the Iraq war for years. Its release comes three days after Deputy Defense Secretary Gordon England signed a new Pentagon directive that elevates irregular warfare to equal footing - for budgeting and planning - as traditional warfare. The directive defines irregular warfare as encompassing counterterrorism operations, guerrilla warfare, foreign internal defense, counterinsurgency and stability operations. Leaders must avoid "the failure to recognize and fully confront the irregular fight that we are in. The requirement to prepare to meet a wide range of threats is going to prove particularly difficult for American forces in the period between now and the 2030s," the study said. "The difficulties involved in training to meet regular and nuclear threats must not push preparations to fight irregular war into the background, as occurred in the decades after the Vietnam War." **Irregular wars are likely to be carried out by terrorist groups, "modern-day militias," and other non-state actors,** the study said. It noted the 2006 tussle between Israel and Hezbollah, a militia that "combines state-like technological and war-fighting capabilities with a 'sub-state' political and social structure inside the formal state of Lebanon." One retired Army colonel called the study "the latest in a serious of glaring examples of massive overreaction to a truly modest threat" - Islamist terrorism. "It is causing the United States to essentially undermine itself without terrorists or anyone else for that matter having to do much more than exploit the weaknesses in American military power the overreaction creates," said Douglas Macgregor, who writes about Defense Department reform at the Washington-based Center for Defense Information. "Unfortunately, the document echoes the neocons, who insist the United States will face the greatest threats from insurgents and extremist groups operating in weak or failing states in the Middle East and Africa." Macgregor called that "delusional thinking," adding that he hopes "Georgia's quick and decisive defeat at the hands of Russian combat forces earlier this year [is] a very stark reminder why terrorism and fighting a war against it using large numbers of military forces should never have been made an organizing principle of U.S. defense policy." Failing States **The study also warns about weak and failing states,** including Mexico and Pakistan. "Some forms of collapse in Pakistan would carry with it the likelihood of a sustained violent and bloody civil and sectarian war, an even bigger haven for violent extremists, **and the question of what would happen to its nuclear weapons**," said the study. "That 'perfect storm' of uncertainty alone might require the engagement of U.S. and coalition forces into a situation of immense complexity and danger with no guarantee they could gain control of the weapons and with the real possibility that a nuclear weapon might be used." On Mexico, JFCOM warns that how the nation's politicians and courts react to a "sustained assault" by criminal gangs and drug cartels will decide whether chaos becomes the norm on America's southern border. "Any descent by Mexico into chaos would demand an American response based on the serious implications for homeland security alone," said the report.

### Solvency

#### Obama circumvents through drones and PMCs- like he did in libya

#### hostilities gets circumvented

Farley ’12 (Benjamin R. Farley, J.D. with honors, Emory University School of Law, 2011. Editor-in-Chief, Emory International Law Review, 2010-2011. M.A., The George Washington University Elliott School of International Affairs, 2007, South Texas Law Review, 54 S. Tex. L. Rev. 385, “ARTICLE: Drones and Democracy: Missing Out on Accountability?”, Winter, 2012)

Congress should strengthen the WPR regime by defining hostilities in a manner that links hostilities to the scope and intensity of a use of force, irrespective of the attendant threat of U.S. casualties. Without defining hostilities, Congress has ceded to the President the ability to evade the trigger and the limits of the WPR. The President's adoption of a definition of hostilities that is tied to the threat of U.S. casualties or the presence of U.S. ground troops opens the door to long-lasting and potentially intensive operations that rely on drones - at least beyond the sixty-day window - that escape the WPR by virtue of drones being pilotless (which is to say, by virtue of drones being drones). Tying hostilities to the intensity and scope of the use of force will limit the President's ability to evade Congressional regulation of war. It will curtail future instances of the United States being in an armed conflict for purposes of international law but not for purposes of domestic law, as was the case in Libya. Finally, a statutory definition of hostilities will provide the judiciary with a meaningful standard for determining presidential compliance with the WPR - assuming the future existence of a plaintiff able to surmount the various prudential doctrines that have counseled against entertaining WPR cases thus far.

**Warming Ans: 1NC [5]**

**Timeframe is 200 years and adaptation solves**

**Mendelsohn 9** – Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: <http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf>

**These statements are** largely **alarmist and misleading**. Although climate change is a serious problem that deserves attention, **society’s immediate behavior has anextremely low probabilityof leading tocatastrophic consequences**. The **science and economics** of climate change **is quite clear that emissions over the next few decades will lead to only mild consequences**. The **severe impacts** predicted by alarmists **require a century (or two** in the case of Stern 2006) **of no mitigation**. Many of the **predicted impacts assume there will be no or little adaptation**. The net economic impacts from climate change over the next 50 years will be small regardless. Most of **the more severe impacts will take more than a century or even a millennium to unfold and many of these** “**potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks**. What is needed are long‐run balanced responses.

**It’s too late**

Andreas **Souvaliotis 12** (3-20, “Is It Too Late to Change Climate Change?” <http://www.huffingtonpost.ca/andreas-souvaliotis/climate-change_b_1365449.html>

The alarm bells were going off 20 years ago at the Rio Summit but few of us were listening. Six years ago, Al Gore raised the volume much higher with his film and we started paying a lot more attention, but we still didn't do much about it. And now **the evidence is mounting that we might,** in fact, **be too far gone already. Climate change is happening much faster than we anticipated**; **feedback loops are kicking in everywhere**, totally **dwarfing** **any of our own** greenhouse gas **contributions**. **Skyrocketing** property damage from **climate volatility is obliterating livelihoods**, panicking insurance companies, and draining government funds. And **the OECD just released a** frightening **study** this week, **suggesting** that our constant debate, dithering, and lack of real response are now setting us up for **a severe** economic and lifestyle **nosedive in the coming decades.**  Maybe some of the cynics are right**: No matter how much we curb our emissions now, the damage is already done and the climate will continue to destabilize**. Maybe that whole "mitigation" concept was pure fantasy and we were a few decades too late. But should we just give up, enjoy the irresponsible partying a little bit longer, and then simply brace ourselves for whatever comes next -- or should we refocus our attention and energy on the things we can still affect?

**Environment treaties solve nothing—modest goals, vague standards, no incentives**

Lawrence **Susskind 08** Strengthening the Global Environmental Treaty System, <http://www.issues.org/25.1/susskind.html>

**For many treaties, the problem is that the goals set are so modest that even if implemented, they would not reverse the trend that triggered the problem-solving effort**. The Convention on Wetlands of International Importance, the Convention on International Trade in Endangered Species, and the Convention on Persistent Organic Pollutants seek to slow the rate at which a resource is lost or pollution occurs, but **under the best of circumstances, they won’t be sufficient to reverse or mitigate the adverse effects that have already occurred**. In quite a few instances, the **responsibilities of signatory countries for meeting timetables and targets are vague**. In general, **we have relied on** what might be called **a two-step** convention-protocol **process**. **First, usually after a decade or more of talks among a limited number of countries, a convention is adopted indicating that a problem exists and exhorting countries to do something about it**. That’s about all the Climate Change Convention accomplished. **Once a convention is ratified, the signatories agree to meet every year or so to talk about ways of adding protocols that spell out more specific timetables and targets. Thus, the Montreal Protocol was a 1990 amendment to the 1987 Vienna Convention**. The protocol called for a total phase-out of a list of CFCs by specific dates. It also scheduled interim reductions for each chemical and called on the signatory countries to reassess relevant control measures every four years. During the time that the protocol was under discussion, there was considerable disagreement regarding the scope of the problem, the level of production cuts required, and the provision of aid to developing nations to enable compliance with phase-out targets. The discovery of a hole in the ozone layer (over the South Pole), along with the availability of less-polluting aerosol alternatives, settled the scientific debate and prompted relatively quick action. In general, **financial resources have not been adequate to enable or ensure treaty compliance**. There are no general funds available at the global level to help cover the cost of treaty implementation. On occasion, some of the most developed nations, with the help of multilateral institutions such as the World Bank, volunteer to contribute small amounts of money through a foundation-like entity called the Global Environmental Fund (GEF) to assist developing nations in meeting their treaty obligations. Often, though, the politics of allocating these funds mean that money must be set aside for each region despite overwhelming needs in one location or the scientific merit of grant proposals from particular countries. Although most treaties require each signatory nation to submit regular progress reports, the treaty secretariats rarely, if ever, have sufficient technical staff to review the accuracy of the information submitted or assist countries that need technical support. The progress reports submitted by some countries often contain information that is questionable. **Some nations don’t take their treaty obligations seriously**. T**hey sign and even ratify treaties, but they don’t adopt national standards consistent with MEA requirements. In some instances**, although they adopt appropriate legislation, **they don’t or can’t enforce the standards**.

**FOUR--Multilateralism solve nothing—4 reasons**

Rising multipolarity, institutional inertia, harder problems and institutional fragmentation

**Young et al 13**

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The **Doha** round of trade negotiations **is** **deadlocked, despite eight successful multilateral trade rounds before it**. **Climate negotiators have met** **for two decades without finding a way to stem global emissions. The UN is paralyzed** in the face of growing insecurities across the world, **the latest** dramatic **example being Syria**. Each of these phenomena could be treated as if it was independent, and an explanation sought for the peculiarities of its causes. Yet, such a perspective would fail to show what they, along with numerous other instances of breakdown in international negotiations, have in common. **Global cooperation is gridlocked across a range of issue areas**. **The reasons for this are** **not the result of any single underlying causal structure**, **but rather of** **several underlying dynamics that work together.** Global **cooperation today is failing not simply because it is very difficult to solve many global problems** – indeed it is – **but because previous phases of global cooperation** have been incredibly successful, producing unintended consequences that **have overwhelmed the problem-solving capacities of the very institutions that created them.** It is hard to see how this situation can be unravelled, given failures of contemporary global leadership, the weaknesses of NGOs in converting popular campaigns into institutional change and reform, and the domestic political landscapes of the most powerful countries. A golden era of governed globalization In order to understand why gridlock has come about it is important to understand how it was that the post-Second World War era facilitated, in many respects, a successful form of ‘governed globalization’ that contributed to relative peace and prosperity across the world over several decades. This period was marked by peace between the great powers, although there were many proxy wars fought out in the global South. This relative stability created the conditions for what now can be regarded as an unprecedented period of prosperity that characterized the 1950s onward. Although it is by no means the sole cause, the UN is central to this story, helping to create conditions under which decolonization and successive waves of democratization could take root, profoundly altering world politics. While the economic record of the postwar years varies by country, many experienced significant economic growth and living standards rose rapidly across significant parts of the world. By the late 1980s a variety of East Asian countries were beginning to grow at an unprecedented speed, and by the late 1990s countries such as China, India and Brazil had gained significant economic momentum, a process that continues to this day. Meanwhile, the institutionalization of international cooperation proceeded at an equally impressive pace. In 1909, 37 intergovernmental organizations existed; in 2011, the number of institutions and their various off-shoots had grown to 7608 (Union of International Associations 2011). There was substantial growth in the number of international treaties in force, as well as the number of international regimes, formal and informal. At the same time, new kinds of institutional arrangements have emerged alongside formal intergovernmental bodies, including a variety of types of transnational governance arrangements such as networks of government officials, public-private partnerships, as well as exclusively private/corporate bodies. Postwar institutions created the conditions under which a multitude of actors could benefit from forming multinational companies, investing abroad, developing global production chains, and engaging with a plethora of other social and economic processes associated with globalization. These conditions, combined with the expansionary logic of capitalism and basic technological innovation, changed the nature of the world economy, radically increasing dependence on people and countries from every corner of the world. This interdependence, in turn, created demand for further institutionalization, which states seeking the benefits of cooperation provided, beginning the cycle anew. This is not to say that international institutions were the only cause of the dynamic form of globalization experienced over the last few decades. Changes in the nature of global capitalism, including breakthroughs in transportation and information technology, are obviously critical drivers of interdependence. However, all of these changes were allowed to thrive and develop because they took place in a relatively open, peaceful, liberal, institutionalized world order. By preventing World War Three and another Great Depression, the multilateral order arguably did just as much for interdependence as microprocessors or email (see Mueller 1990; O’Neal and Russett 1997). Beyond the special privileges of the great powers **Self-reinforcing interdependence has** now **progressed to the point** **where it has altered our ability to engage in further global cooperation.** That is, **economic and political shifts in large part attributable to the successes of the post-war multilateral order are now amongst the factors** **grinding that system into gridlock.** Because of the remarkable success of global cooperation in the postwar order, human interconnectedness weighs much more heavily on politics than it did in 1945. The **need for international cooperation has never been higher**. **Yet the “supply” side of the equation, institutionalized multilateral cooperation, has stalled.** **In areas such as** nuclear **proliferation**, the explosion of small **arms sales, terrorism, failed states, global economic imbalances**, financial market instability, global **poverty** and inequality, **biodiversity losses, water deficits and climate change**, **multilateral and transnational cooperation is now increasingly ineffective or threadbare.** Gridlock is not unique to one issue domain, but appears to be becoming a general feature of global governance: **cooperation seems** to be **increasingly difficult and deficient** at **precisely** the time **when it is needed most**. It is possible to identify **four reasons for this blockage**, four pathways to gridlock: **rising multipolarity, institutional inertia, harder problems, and institutional fragmentation**. **Each** pathway can be thought of as **a growing trend** **that embodies a specific mix of causal mechanisms**. Each of these are explained briefly below. **Growing multipolarity**. **The absolute number of states** **has increased by 300 percent in the last 70 years,** **meaning** that the most **basic transaction costs of global governance have grown**. More importantly, **the number of states that “matter” on a given issue**—that is, the states without whose cooperation a global problem cannot be adequately addressed—**has expanded by similar proportions**. At Bretton Woods in 1945, the rules of the world economy could essentially be written by the United States with some consultation with the UK and other European allies. In the aftermath of the 2008-2009 crisis, the G-20 has become the principal forum for global economic management, not because the established powers desired to be more inclusive, but because they could not solve the problem on their own. However, a consequence of this progress is **now** that **many more countries, representing a diverse range of interests, must agree** in order **for** global **cooperation to occur**. **Institutional inertia**. The postwar

order succeeded, in part, because it incentivized great power involvement in key institutions. From the UN Security Council, to the Bretton Woods institutions, to the Non-Proliferation Treaty, key pillars of the global order explicitly grant special privileges to the countries that were wealthy and powerful at the time of their creation. This hierarchy was necessary to secure the participation of the most important countries in global governance. Today, the gain from this trade-off has shrunk while the costs have grown. **As power shifts from West to East, North to South, a broader range of participation is needed** on nearly all global issues if they are to be dealt with effectively. At the same time, following decolonization, the end of the Cold War and economic development, **the idea that some countries should hold more rights and privileges than others is increasingly** (and rightly) **regarded as morally bankrupt**. And **yet, the architects of the postwar order did not**, in most cases, **design institutions that would organically adjust to fluctuations in national power**. **Harder problems**. As independence has deepened, **the types and scope of problems around which countries must cooperate has evolved**. **Problems are both now more extensive**, implicating a broader range of countries and individuals within countries, **and intensive**, penetrating deep into the domestic policy space and daily life. Consider the example of trade. For much of the postwar era, trade negotiations focused on reducing tariff levels on manufactured products traded between industrialized countries. Now, however, negotiating a trade agreement requires also discussing a host of social, environmental, and cultural subjects - GMOs, intellectual property, health and environmental standards, biodiversity, labour standards—about which countries often disagree sharply. In the area of environmental change a similar set of considerations applies. To clean up industrial smog or address ozone depletion required fairly discrete actions from a small number of top polluters. By contrast, **the threat of climate change and the efforts to mitigate it involve nearly all countries of the globe**. **Yet, the divergence of voice and interest within both the developed and developing worlds, along with the sheer complexity of the incentives** needed to achieve a low carbon economy, **have made a global deal, thus far, impossible** ( Falkner et al. 2011; Victor 2011). **Fragmentation**. The institution-builders of the 1940s began with, essentially, a blank slate. But **efforts to cooperate internationally today occur in** **a dense institutional ecosystem shaped by path dependency**. The **exponential rise in** both multilateral and transnational **organizations has created a more complex multilevel and multi-actor system of global governance.** Within this dense web of institutions mandates can conflict, **interventions are frequently uncoordinated**, and all too typically **scarce resources are subject to intense competition**. In this context, the proliferation of institutions tends to lead to dysfunctional fragmentation, reducing the ability of multilateral institutions to provide public goods. When funding and political will are scarce, countries need focal points to guide policy (Keohane and Martin 1995), which can help define the nature and form of cooperation. Yet, when international regimes overlap, these positive effects are weakened. **Fragmented institutions**, in turn, **disaggregate resources and political will, while increasing transaction costs.** In stressing four pathways to gridlock we emphasize the manner in which contemporary global governance problems build up on each other, although different pathways can carry more significance in some domains than in others. The **challenges now faced by the multilateral order are substantially different from those faced** by the 1945 victors **in the postwar settlement**. They are second-order cooperation problems arising from previous phases of success in global coordination. Together, they now block and inhibit problem solving and reform at the global level.

### Envt: New 1NC

#### No impact to bio-d loss – no spillover, ecosystems adapt – their ev is bad science

Jeremy Hance, senior writer at Mongabay citing Barry Brook, Sir Hubert Wilkins Chair of Climate Change at the School of Earth and Environmental Sciences at the University of Adelaide, and Director of Climate Science at the University of Adelaide’s Environment Institute, 3-5-2013, “Warnings of Global Ecological Tipping Points May Be Overstated” http://news.mongabay.com/2013/0305-hance-tipping-points.html#r2IbUBDMyux2eU7i.99

There's little evidence that the Earth is nearing a global ecological tipping point, according to a new Trends in Ecology and Evolution paper that is bound to be controversial. The authors argue that despite numerous warnings that the Earth is headed toward an ecological tipping point due to environmental stressors, such as habitat loss or climate change, it's unlikely this will occur anytime soon—at least not on land. The paper comes with a number of caveats, including that a global tipping point could occur in marine ecosystems due to ocean acidification from burning fossil fuels. In addition, regional tipping points, such as the Arctic ice melt or the Amazon rainforest drying out, are still of great concern. "When others have said that a planetary critical transition is possible/likely, they've done so without any underlying model (or past/present examples, apart from catastrophic drivers like asteroid strikes)," lead author Barry Brook and Director of Climate Science at the University of Adelaide told mongabay.com. "It’s just speculation and we’ve argued [...] that this conjecture is not logically grounded. No one has found the opposite of what we suggested—they’ve just proposed it." According to Brook and his team, a truly global tipping point must include an impact large enough to spread across the entire world, hitting various continents, in addition to causing some uniform response. "These criteria, however, are very unlikely to be met in the real world," says Brook. The idea of such a tipping point comes from ecological research, which has shown that some ecosystems will flip to a new state after becoming heavily degraded. But Brook and his team say that tipping points in individual ecosystems should not be conflated with impacts across the Earth as a whole. Even climate change, which some scientists might consider the ultimate tipping point, does not fit the bill, according to the paper. Impacts from climate change, while global, will not be uniform and hence not a "tipping point" as such. "Local and regional ecosystems vary considerably in their responses to climate change, and their regime shifts are therefore likely to vary considerably across the terrestrial biosphere," the authors write. Barry adds that, "from a planetary perspective, this diversity in ecosystem responses creates an essentially gradual pattern of change, without any identifiable tipping points." The paper further argues that biodiversity loss on land may not have the large-scale impacts that some ecologists argue, since invasive species could potentially take the role of vanishing ones. "So we can lose the unique evolutionary history (bad, from an intrinsic viewpoint) but not necessarily the role they impart in terms of ecosystem stability or provision of services," explains Brook. The controversial argument goes against many scientists' view that decreased biodiversity will ultimately lessen ecological services, such as pollination, water purification, and carbon sequestration.

### Nanotech 1NC

#### nanotech impossible--fat and sticky fingers

Smalley in 2001 [Richard – Gene and Norman Hackerman Professor of Physics and Chemistry @ Rice University, received the 1996 Nobel Prize in Chemistry for the discovery of fullerenes – September, “Nanofallacies: of Chemistry, Love, and Nanobots,” Scientific American, Vol. 285 #3]

But how realistic is this notion of a self-replicating nanobot? Let's think about it. Atoms are tiny and move in a defined and circumscribed way--a chemist would say that they move so as to minimize the free energy of their local surroundings. The electronic "glue" that sticks them to one another is not local to each bond but rather is sensitive to the exact position and identity of all the atoms in the near vicinity. So when the nanomanipulator arm of our nanobot picks up an atom and goes to insert it in the desired place, it has a fundamental problem. It also has to somehow control not only this new atom but all the existing atoms in the region. No problem, you say: our nanobot will have an additional manipulator arm for each one of these atoms. Then it would have complete control of all the goings-on that occur at the reaction site. But remember, this region where the chemistry is to be controlled by the nanobot is very, very small--about one nanometer on a side. That constraint leads to at least two basic difficulties. I call one the fat fingers problem and the other the sticky fingers problem. Because the fingers of a manipulator arm must themselves be made out of atoms, they have a certain irreducible size. There just isn't enough room in the nanometer-size reaction region to accomodate all the fingers of all the manipulators necessary to have complete control of the chemistry. In a famous 1959 talk that has inspired nanotechnologists everywhere, Nobel physicist Richard Feynman memorably noted, "There's plenty of room at the bottom." But there's not that much room. Manipulator fingers on the hypothetical self-replicating nanobot are not only too fat; they are also too sticky: the atoms of the manipulator hands will adhere to the atom that is being moved. So it will often be impossible to release this minuscule building block in precisely the right spot. Both these problems are fundamental, and neither can be avoided. Selfreplicating, mechanical nanobots are simply not possible in our world. To put every atom in its place--the vision articulated by some nanotechnologists-would require magic fingers. Such a nanobot will never become more than a futurist's daydream.

**Terror--Bio—1NC**

Bioterror risk is low—dispersal problems, tech barriers, risk fo back spread—experts agree

John **Mueller**, Professor, Political Science, Ohio State University, OVERBLOWN: HOW POLITICIANS AND THE TERRORISM INDUSTRY INFLATE NATIONAL SECURITY THREATS, AND WHY WE BELIEVE THEM, 20**09**, p. 21-22.

**For the most destructive results, biological weapons need to be dispersed in very low-altitude aerosol clouds. Because aerosols do not appreciably settle, pathogens** like anthrax (which is not easy to spread or catch and is not contagious) would **probably have to be sprayed near nose level.** Moreover, **90 percent of the microorganisms are likely to die during the process of aerosolization, and their effectiveness could be reduced still further by sunlight, smog, humidity, and temperature changes. Explosive methods of dispersion may destroy the organisms,** and, except for anthrax spores, long-term storage of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organisms have a limited lifetime**. The effects of such weapons can take days or weeks to have full effect, during which time they can be countered with medical and civil defense measures**. And **their impact is very difficult to predict**; in combat situations they may spread back onto the **attacker. In the judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties**—as an aerosol that can be inhaled—**requires a delivery system whose development "would outstrip the technical capabilities of all but the most sophisticated terrorist" Even then effective dispersal could easily be disrupted by unfavorable environmental and meteorological conditions." After assessing, and stressing, the difficulties a nonstate entity would find in obtaining, handling, growing, storing, processing, and dispersing lethal pathogens effectively, biological weapons expert Milton Leitenberg compares his conclusions with glib pronouncements in the press about how biological attacks can be pulled off by anyone with "a little training and a few glass jars," or how it would be "about as difficult as producing beer." He sardonically concludes, "The less the commentator seems to know about biological warfare the easier [they]** ~~he~~ **seems to think the task is.""**

### 2nd adv

#### aff sets a precedent which causes nuclear disclosure- kills deterrence causes first strikes on the US

**Green**, J.D. South Carolina & Associate at McNair Law Firm, 19**97** (Tracey, “Providing for the Common Defense versus Promoting the General Welfare, South Carolina Environmental Law Journal, Fall, 6 S.C Envtl. L.J. 137)

The deployment of nuclear weapons, however, is a DoD action for which secrecy is crucial and, thus, is classified by Executive Order. n59 According to the American policy of deterrence through mutually assured destruction (MAD), nuclear weapons are essential to an effective deterrent. n60 If DoD disclosed the location of these weapons, disclosure would reduce or destroy the deterrent. An adversary could destroy all nuclear weapons with an initial strike, leaving the country exposed to nuclear terror. n61 Additionally, terrorists would know where to strike to obtain material for nuclear blackmail. In short, secrecy regarding nuclear weapons has enormous implications for national security. While the armed services must consider the environmental effects of maintaining nuclear weapons, they cannot release any information regarding the storage of these weapons. However, some public interest groups have an agenda at odds with DoD and see NEPA's review process as a method of achieving their goals. Environmental groups generally distrust the efforts of federal agencies, and arms control groups want to hamper or stop weapons deployment. These groups sue the Army or Navy in court, requesting that the judiciary review the agency's actions, review or order the preparation of an EIS, and order the agency to conform to NEPA. n62 Through the suit, public review accompanies judicial review. In these situations, a conflict arises between the judiciary's duty to avoid interfering with national security and its duty to enforce federal law passed by Congress. n63 [\*145] In Weinberger v. Catholic Action of Hawaii/Peace Education Project, n64 the Supreme Court addressed the issues surrounding judicial review of the environmental aspects of a national defense strategy. However, the Court did not confront the difficult Constitutional issues concerning the conflict between environmental and defense policy. Instead, the Court decided the issue as a matter of public and statutory policy. The Navy decided to transfer ammunition and weapons from various locations on Oahu, Hawaii to the West Loch branch of the Lualualei Naval Magazine on Oahu. As part of the transfer, the Navy planned to build forty-eight earth-covered magazines. The Navy prepared an EA to analyze the effect of the construction. During the EA process, the Navy concluded that constructing the magazines would not significantly impact the environment. Thus, the Navy did not prepare an EIS for the transfer. n65 Early in 1978, however, the Navy had prepared a Candidate EIS (CEIS), which was a general analysis of the environmental hazards accompanying the storage, handling, and transportation of nuclear weapons in all situations. The CEIS was general in nature, and did not specifically refer to any particular facility. n66 The CEIS concluded that nuclear weapons posed no significant hazards to the environment. n67 In March 1978, the plaintiffs sought an injunction against the Navy until it filed an EIS. The plaintiffs complained that the Navy's EA ignored the effect of a potential nuclear accident on nearby air facilities and local residents, as well as the danger of radiation emanating from stored nuclear weapons. n68 The District Court rejected the claim for injunctive relief, finding that although building the magazines was a major federal action, the Navy had complied with NEPA as fully as possible based on "national security provisions of the Atomic Energy Act, . . . and the Navy's own regulations concerning nuclear weapons." n69 The Ninth Circuit Court of Appeals reversed. n70 The court held that the Atomic Energy Act and the Navy's own regulations did not preclude compliance with NEPA. n71 An EIS should, consistent with NEPA, consider not only the construction [\*146] of the facility but also the purpose of the facility. n72 Because the Navy admitted that the magazines were nuclear-capable, the Ninth Circuit held that the Navy could prepare a "hypothetical EIS," presumably without admitting storage of nuclear weapons in the magazines. n73 Thus, the Ninth Circuit attempted to bridge the gap between complying with NEPA while maintaining the necessary secrecy for national security matters by creating a hypothetical EIS. The Supreme Court reversed the Ninth Circuit, rejecting its analysis n74 The Court asserted that NEPA's primary goal is the consideration of "environmental values and consequences . . . during the planning stage of agency actions." n75 Because some agencies make decisions that involve confidential information, NEPA expressly makes disclosure of an EIS subject to the provisions of the Freedom of Information Act (FOIA). n76 Thus, the public disclosure requirements exist for the purpose of ensuring that federal agencies properly consider environmental variables. The Court held that FOIA governed any disclosure under NEPA, which is Congress's effort to balance the need for secrecy against the need for disclosure. n77 As a general matter, FOIA provides for full disclosure. However, FOIA includes a list of nine exceptions that exempt certain matters from disclosure. n78 The most important of these is the exemption for matters affecting national defense or foreign policy when properly classified pursuant to an Executive Order. n79

At the time that the Navy proposed action regarding its weapons in Hawaii, Executive Order 12,065 provided that certain officials could classify information if releasing the information would undermine national security. n80 The Executive Order assigned to the executive branch the authority to classify the majority of information regarding nuclear weapons. n81 Thus, information regarding the deployment of nuclear weapons, if properly classified, was exempt from disclosure under the provisions of NEPA. n82 Determining that FOIA is Congress's effort to balance NEPA's disclosure and secrecy requirements, the Court rejected the Ninth Circuit's hypothetical EIS as judicial creation of a NEPA reporting requirement that would not otherwise exist. n83 NEPA sets forth the requirements when an agency must prepare an EIS. n84 FOIA sets forth the circumstances under which an agency may disclose the EIS to the public, but it does not create an independent requirement to generating a disclosure document. n85 Because NEPA did not require the Navy to "release an EIS were one was already prepared," NEPA does not require the navy to prepare a 'hypothetical' EIS not mentioned in NEPA. n86 The Court held that under the relevant statutory framework, the Navy must prepare an EIS only when it proposes a project, rather than when it merely contemplates a project. n87 If the Navy "proposes to store nuclear weapons at West Loch," DoD regulations existing at the time required the Navy to prepare an EIS and consider environmental factors in their deployment decisions. n88 Because the Navy could not admit or deny the existence of a proposal for the storage of nuclear weapons at the West Loch facility, however, the plaintiffs could not show that the Navy was preparing to take the action that would implicate NEPA's requirement to prepare an EIS. Thus, a district court could not force the Navy to prepare or disclose anything, including a hypothetical EIS, regarding the environmental consequences of nuclear weapons at Oahu. n89 The Court concluded that "whether or not the Navy has complied with NEPA 'to the fullest extent possible' is beyond judicial scrutiny in this case." n90 With a somewhat cryptic reference to the state secrets privilege, the Court asserted that, as a matter of public policy, it could not review any controversy which would inevitably lead to the disclosure of confidential information. n91 Justice Blackmun, concurring, also refused to require the Navy to prepare a hypothetical EIS. n92 However, Justice Blackmun did so on largely pragmatic grounds [\*148] rather than the statutory grounds invoked by Justice Rehnquist. He thought that the Navy "convincingly argued that publishing a hypothetical EIS would itself disclose confidential material, and would therefore run afoul of the FOIA's first exemption." n93 He also thought that the plaintiffs never established, as an initial matter, that the Navy must prepare an EIS for the storage of nuclear weapons. n94 Finally, Justice Blackmun rejected the application of the state secrets privilege as unnecessary on these facts; FOIA's first exemption was sufficient to dispose of this case because the plaintiffs could not carry their burden of proof. n95 Read narrowly, Catholic Action focuses solely on maintaining the confidentiality of information regarding the deployment of nuclear weapons. The Court's analysis relied heavily on FOIA's exemption for disclosing information affecting national security, such as the deployment of nuclear weapons. n96 As the Court noted, the executive branch classifies most of the information regarding the deployment of nuclear weapons. n97 Any suit brought in federal court risks disclosing sensitive national security information because of the extensive secrecy involving nuclear weapons. n98 To avoid leaks, the Supreme Court refused to allow any judicial review of the Navy's decision making process. n99 The Court never directly analyzes Congress's FOIA's in camera review provisions, however. Instead, the Court indirectly dismissed any possibility of judicial review almost three pages after mentioning the "properly defined" requirement. n100 The Court did so by citing the state secrets privilege for the proposition that, as a public policy matter, courts cannot review issues if the judicial process might disclose confidential information. n101 Generally, Congress dictates public policy. n102 A statute passed by Congress di- [\*149] recting the judiciary to review classified material in camera, in the absence of other factors, necessarily creates a public policy for judicially reviewed state secrets. n103 However, the FOIA provision at issue exempted from disclosure only information that is "in fact properly classified pursuant to an Executive Order." n104 Based on the history of the 1974 amendments to FOIA, Congress apparently intended for the judiciary to serve as an independent party and perform an in camera review when necessary to evaluate whether the information for which an exemption is claimed is, in fact, properly classified. n105 By failing to address this issue in Catholic Action, the Court significantly confuses this dispute and never satisfactorily resolves the conflicting legal issues. n106 Nonetheless, the opinion closes the door on judicial review of cases involving confidential information about nuclear weapons. In effect, in an approach analogous to the Navy's preparation of a blanket CEIS, n107 the Supreme Court performed its own in camera review and made a comprehensive determination that all information regarding nuclear weapons was properly classified. n108 The Supreme Court likely did so because of the critical nature of nuclear weapons for American defense. As a result, lower federal courts have no reason to perform an in camera review of confidential information concerning nuclear weapons. However, the impact of the Court's short statement regarding the state secrets privilege with regard to other weapons and projects is unclear. Justice Rehnquist closed his opinion for the Court in Catholic Action by stating that, as a matter of public policy, the Court should not review cases that might cause [\*150] the disclosure of confidential information. n109 Although he never directly refers to the state secrets privilege, Justice Rehnquist cited Totten v. United States n110 as support for his public policy assertion. n111 Commentators generally opine that the Totten decision represents the state secrets privilege, n112 a privilege which dictates that courts should avoid cases which could result in disclosing classified information. n113 Members of the executive branch invoke the state secrets privilege in military or diplomatic matters involving confidential information. n114 The President, as Commander-in-Chief, can invoke the privilege in matters that involve national security. n115 Once a court perceives a danger of releasing classified information, "the court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone, in chambers." n116 Clearly, the state secrets privilege is extremely deferential to the President as the constitutionally ordained Commander-in-Chief n117 and limits the power of federal courts to review Presidential decisions. n118 Reading Catholic Action as a comprehensive determination that the executive has properly classified all information regarding nuclear weapons forecloses judicial review by lower federal courts without regard to the state secrets privilege. Under this view, the state secrets privilege seems superfluous. However, the Court might have feared that, even with a blanket approval for classified information regarding nuclear weapons, lower courts might eventually review some information regarding nuclear weapons. Catholic Action necessarily considered only the information available in 1981. The advance of science and technology would inevitably make new information available. Ten years later, a judge might have decided to review new information to determine if the executive branch properly classified it. However, the Court in Catholic Action precluded present and future review of confidential nuclear weapons information by including the state secrets privilege in its analysis. Through the state secrets privilege, Justice Rehnquist maintains a strong standard [\*151] of judicial deference to Presidential policy-making regarding nuclear weapons. Although the Court in Catholic Action defined the privilege as involving public policy, n119 it almost always involves national security. n120 National security issues implicate the proper separation of powers. n121 Thus, the state secrets privilege implicates questions of the judiciary's role in reviewing matters of national security, a question that the Court avoids if possible. n122

#### FORCING MORE ENVIRONMENTAL PRESSURE ON THE DOD UNDERMINES TRAINING AND COMBAT READINESS

**Montalvo**, of the Temple Environmental Law & Technology Journal, **02** (Eric, “Operational Encroachment: Woodpeckers and their Congressman,” Temple Environmental Law & Technology Journal, Spring, 20 Temp. Envtl. L. & Tech. J. 219)

The judicial granting of injunctive relief for an administrative error resulting in temporary or permanent cease of military operations is of no small consequence. The harshness of a choice between environmental concerns and the deprivation of essential training from the men and women of the Armed Forces cannot be what Congress intended by the incorporation of injunctive relief in the citizen suit provisions of the various environmental statutes. In his testimony before the Senate Armed Services Committee on encroachment issues and their impact on military readiness n23, Admiral Amerault described the deprivation of training "impact" as follows: When our vital ranges are not available for training because they are encumbered by encroachments, our state of readiness is at risk. This is complicated by the fact that encroachment issues are complex, varied, and involve multiple federal, state, and local agencies, the Congress, non-governmental organizations and the public. In dealing with its effects, we have borne a significant increase in administrative and human costs (time away from home, flight hour costs, travel expenses etc.) to achieve an acceptable level of readiness. In some instances, we have been unable to achieve the desired level. Encroachment negatively affects readiness by reducing the number of available training days; reducing training realism as tactics are modified (altitudes, airspeeds, profiles) ... causing a loss of range access altogether (either temporary or permanent); decreasing scheduling flexibility and complexity ... and inc\

reasing time away from home during training prior to deployment. Encroachment is often gradual and can go unnoticed, but its impacts cumulatively erode our ability to deploy combat ready Sailors and Marines. Knowledge of these domestic pressures by our allies may influence them to deny use of their ranges by our forces ... This loss of training opportunities will reduce fleet combat readiness proportionately. n24 Congress, in its efforts to address deepening concerns over the deterioration of our environment and historical non-compliance by federal facilities, enacted environmental legislation with the intent of reversing the effects of years of non-compliance and encouraging future compliance and prevention. n25 A seemingly unintended consequence, however, of the inclusion of citizen suit provisions - more specifically the availability of injunctive relief has been the creation of a litigation battleground between national security interests and the environment. A "line in the sand" has been drawn between national security interests and environmental concerns. The adversarial process has produced just that - adversaries. An added wrinkle is that a number of the noncompliance allegations against the DOD maintain dubious environmental claims, keeping hidden what may truly set the parties apart. n26 It seems unlikely that Congress intended the training of a Carrier Battle Group n27 to be stopped by an alleged siting of an endangered turtle - especially in today's climate of terror. n28

#### C. READINESS IS CRITICAL TO GLOBAL CONFLICT PREVENTION

**Spencer**, Defense and National Security Analyst at the Heritage Foundation, 9-15-**2K** (Jack, “THE FACTS ABOUT MILITARY READINESS,” Heritage Foundation Reports, N. 1394, P. 1)

Such a standard is necessary because America may confront threats from many different nations at once. America's national security requirements dictate that the armed forces must be prepared to defeat groups of adversaries in a given war. America, as the sole remaining superpower, has many enemies. Because attacking America or its interests alone would surely end in defeat for a single nation, these enemies are likely to form alliances. Therefore, basing readiness on American military superiority over any single nation has little saliency. The evidence indicates that the U.S. armed forces are not ready to support America's national security requirements. Moreover, regarding the broader capability to defeat groups of enemies, military readiness has been declining. The National Security Strategy, the U.S. official statement of national security objectives, n3 concludes that the United States "must have the capability to deter and, if deterrence fails, defeat large-scale, cross-border aggression in two distant theaters in overlapping time frames." n4 According to some of the military's highest-ranking officials, however, the United States cannot achieve this goal. Commandant of the Marine Corps General James Jones, former Chief of Naval Operations Admiral Jay Johnson, and Air Force Chief of Staff General Michael Ryan have all expressed serious concerns about their respective services' ability to carry out a two major theater war strategy. n5 Recently retired Generals Anthony Zinni of the U.S. Marine Corps and George Joulwan of the U.S. Army have even questioned America's ability to conduct one major theater war the size of the 1991 Gulf War. n6 Military readiness is vital because declines in America's military readiness signal to the rest of the world that the United States is not prepared to defend its interests. Therefore, potentially hostile nations will be more likely to lash out against American allies and interests, inevitably leading to U.S. involvement in combat. A high state of military readiness is more likely to deter potentially hostile nations from acting aggressively in regions of vital national interest, thereby preserving peace.

#### aff kills Sonar training

Charles Gartland, Major, USAF JAG, “At War and Peace with the National Environmental Policy Act: When Political Questions and the Environment Collide,” AIR FORCE LAW REVIEW v. 68, 2012, LN.

The public interest in conducting training exercises with active sonar under realistic conditions plainly outweighs the interests advanced by the plaintiffs" (emphasis added). n407 At least two Supreme Court Justices disagreed n408 with Chief Justice Roberts' characterization in Winter, and, arguably, four of them disagreed (depending on how the partial concurrence/dissent by Justice Breyer, partially joined by Justice Stevens, is construed). n409 Certainly the Ninth Circuit disagreed, n410 and that highlights a significant rub, namely, that the drastic remedy of an injunction appears to have no predictability whatsoever. In one nuclear detonation case, Committee for Nuclear Responsibility v. Schlesinger, the test goes forward; n411 another two years later, Enewetak, a different test is enjoined. n412 In one training case, Barcelo v. Brown, military training exercises are allowed to proceed, n413 whereas in others, Evans and Winter (until the Supreme Court phase) they are enjoined. n414 Such uncertainty is a natural outcome of the process unfolding in all these cases: a judicial decision to grant an injunction under NEPA against a national defense activity is--by the very nature of the four part injunction test--a policy decision; and people (and judges) disagree about what constitutes good public policy. Policy decisions lie with the legislative and executive branches, and in the case of national defense, the policy decision has already been settled by statute and the Constitution--both of which provide for a national defense establishment that, in protecting the Republic, allows statutes like NEPA to exist in the first place.

#### That’s key to overall Naval power and anti-submarine warfare.

Daniel Popeo et al, Brief Brief for Amici Curiae The Washington Legal Foundation, Rear Admiral James J. Carey, U.S. Navy (Ret.), National Defense Committee, and Allied Educational Foundation in Support of Petitioners, 2008, www.wlf.org/upload/07-1239winter.pdf

Throughout our Nation's history, the Navy has played a vital role in major world events occurring during both times of war and peace. As a maritime Nation, the United States relies on the "Navy's ability to operate freely at sea to guarantee access, sustain trade and commerce, and partner with other nations to ensure not only regional security but defense of our own homeland." App. 314a (statement of Rear Admiral Ted N. Branch). For this reason, it has been recognized that this ability "to operate freely at sea is one of the most important enablers of national power- diplomatic, information, military and economic." App. 315a-316a (statement of Rear Admiral Ted N. Branch). The only way to ensure our Nation's ability to so operate at sea is through naval training. Indeed, it is a Navy maxim that "We train as we will fight so that we will fight as we have trained." J.A. 576 (statement of Captain Martin N. May). Antisubmarine warfare has long been a key component of naval warfare. Because submarine detection and antisubmarine warfare require the coordinated efforts of vast numbers of Navy personnel, repeated training in battle conditions is essential to naval readiness. And, in our modern era, advanced technologies enable our enemies to deploy submarines that are capable of carrying long-range weapons while operating in virtual silence, nearly wholly undetectable except through the use of MFA sonar. Thus, antisubmarine warfare training utilizing MFA sonar is an absolute necessity in preparing our Navy to detect and combat enemy submarines. It goes without saying that, in a time of armed conflict, naval training and readiness are indispensable. Indeed, with American troops currently deployed throughout the world and, specifically, engaged in war in Afghanistan and Iraq, the Navy's role in our national security has never been more important than at the present. Maintaining an effective and proficient Navy, therefore, is of the utmost importance to the United States' national defense and homeland security. It is for this reason that the President determined that "the COMPTUEX and JTFEX, including the use of mid-frequency active sonar in these exercises, are in the paramount interest of the United States." App. 232a. A. A Well-Trained Navy Has Always Been A Cornerstone Of Our National Defense. Naval training has undoubtedly been at the center of the U.S. Navy's prior wartime and peacetime successes. Only a well-trained navy could have successfully fought in both the Atlantic and Pacific oceans simultaneously, as the U.S. Navy demonstrated in World War II. During World War II, the U.S. Navy's antisubmarine training was largely responsible for defeating the German submarines that were dangerously close to securing victory in the Battle of the Atlantic. See THEODORE ROSCOE & RICHARD G. VOGE, UNITED STATES SUBMARINE OPERATIONS IN WORLD WAR II xviii (Naval Institute Press 1949). It was also the joint training exercises of Operation Tiger that prepared the U.S. Navy and Army for the Normandy Invasion. See Operational Archives, Naval Historical Center, Operation Tiger, available at http-//www.history. navy.mil/faqs/faq20-l.htm (last visited July 23, 2008). Without this preparation, one of the most important battles in world history, D-Day, may have resulted in devastating failure for the United States and its allies. The Cuban Missile Crisis presented another major world event in which the Navy's readiness was of critical importance to our national security. In 1962, naval forces under U.S. Atlantic Command maintained a month-long naval "quarantine" of the island of Cuba in order to prevent the Soviet Union's deployment of ballistic missiles there. Cuban Missile Crisis, 1962, available at http '//www. history, navy. mil/faqs/faq90-l.htm (last visited July 23, 2008). The immediate readiness of the U.S. Navy in these circumstances defused a situation that came as close as the United States and Soviet Union ever came to global nuclear war. Id. At a minimum, the Navy blockade was a demonstration of the United States' strength. Naturally, the beneficial effects of naval training did not end with World War II or even the Cold War. Naval training exercises have continued to adequately prepare the Navy for effective and safe military campaigns and have continued to symbolize a strong Nation at the ready to protect its interests at home and abroad. That a well-trained Navy indicates and symbolizes American strength is not a creation of fantasy. It is a theme well-recognized by our Nation's prior and current enemies. Indeed, the importance of the U.S. Navy was not overlooked by the Japanese in their bombing of Pearl Harbor, nor was the symbolism of a U.S. Navy destroyer lost in al-Qaeda's suicide bombing attack against the USS Cole. That the Navy has been a target of strategic and symbolic attacks from our Nation's enemies further demonstrates the need for proper training to ensure the safety and success of the Navy in its vital role of defending the homeland. Undoubtedly, thorough training is a requisite to an effective Navy. On-the-job training in combat, it follows, "is the worst possible way of training personnel" and can place the success of military missions "at significant risk." App. 278a (statement of Rear Admiral John M. Bird). Consequently, naval training should be performed prior to actual combat to ensure the preparedness

and eventual success in our Navy's military missions. This seemingly obvious statement is, quite possibly, even more relevant to the Navy's mission of defending against enemy submarines. B. Training For Anti-Submarine Warfare Is A Critical Component Of Naval Readiness. The Navy is the only service—military or otherwise—that can address the threat from submarines, and any curtailment of its ability to train for this mission would decrease the Navy's ability to handle that threat. App. 315a (statement of Rear Admiral Ted N. Branch). For years, the Navy has employed SONAR to "identify and track submarines, determine water depth, locate mines, and provide for vessel safety." App. 266a (statement of Rear Admiral John M. Bird). The Navy started using SONAR after World War I, and every naval vessel engaged in antisubmarine activity was equipped with sonar systems by the start of World War II. App. 268a. Indeed, as indicated above, antisubmarine warfare was integral to the Navy's successful campaigns against German submarines in World War II. Antisubmarine warfare is a science in which considerable effort goes into making and maintaining contact with the submarine. App. 354a~356a; see also App. 278a ("ASW occurs over many hours or days. Unlike an aerial dogfight, over in minutes and even seconds, ASW is a cat and mouse game that requires large teams of personnel working in shifts around the clock to work through an ASW scenario.") This fact is even more applicable when quiet, diesel-electric submarines—submarines increasingly utilized by hostile nations—are involved; modern diesel-electric submarines are capable of defeating the best available passive sonar technology by "suppress[ing] emitted noise levels." App. 274a. In addition, the far-reaching range of weapons found on modern submarines make it possible for those submarines to avoid placing themselves within range of passive sonar. App. 274a. As a result, active sonar is necessary to detect the presence of diesel-electric submarines. App. 269a\_270a. The Nation's top naval officers agree that the Navy must be able to freely utilize MFAS during antisubmarine warfare training in order to properly defend against the threats posed by diesel-electric submarines. See, e.g., App. 311a-325a, 338a-347a, 350a-357a.. If the Navy were prevented from training with MFAS or other active sonar, and were limited to using passive sonar in certain situations, the survivability of the Navy's antisubmarine missions would ultimately be placed at "great risk." App. 269a (statement of Rear Admiral John M. Bird). "[Rlealistic and repetitive [antisubmarine warfare] training with active SONAR is necessary for our forces to be confident and knowledgeable in the Navy's plans, tactics, and procedures to perform and survive in situations leading up to hostilities as well as combat." App. 277a. Therefore, blanket mitigation measures on MFAS training "would dramatically reduce the realism of [antisubmarine warfare] training" and would be fraught with "severe national security consequences." App. 273a (statement of Rear Admiral John M. Bird). C. The Navy's Use Of MFA Sonar In The Challenged Military Exercises Is Indispensable To Our National Security In This Time Of Armed Hostilities Across the Globe. It is clear that the COMPTUEX and JTFEX training exercises are the only way the Navy's Pacific Fleet can gain the realistic training that is necessary, especially during a time of war. These exercises represent the singular opportunity for 6,000-plus Sailors and Marines to train together in a realistic environment prior to deployment and to gain proficiency in MFAS. App. 270a-271a; App. 343a. Anytime a strike group is prevented from becoming fully proficient in MFAS, and therefore cannot be certified as combat ready, national security is negatively affected. App. 271a (statement of Rear Admiral John M. Bird). And, considering the heightened sensibilities in a time of war, any interference creates a severe impact on training and certification of readiness to perform realistic antisubmarine warfare. Because the stakes of antisubmarine warfare are so high, contact with an enemy submarine is not surrendered unless there is an order to do so. App. 355a. Even a few minutes of MFAS shutdown "would be potentially fatal in combat." App. 355a-356a (statement of Vice Admiral Samuel J. Locklear, III). As a result, a single lost contact with the submarine "cripples certification for the units involved" in the exercises. App. 356a>\* see also id. ("It may take days to get to the pivotal attack in antisubmarine warfare, but only minutes to confound the results upon which certification is based."). For these reasons, the Chief of Naval Operations, who is specifically responsible for organizing, training, equipping, preparing and maintaining the readiness of Navy forces, described COMPTUEX and JTFEX as "indispensable" training exercises. App. 342a (statement of Admiral Gary Roughead). Unsuccessful naval training in the area of antisubmarine warfare can have far-reaching consequences. As Rear Admiral Ted N. Branch recognized Any restriction or disadvantage imposed on our [antisubmarine warfare] capability that impedes the U.S. Navy's ability to retain control of the sea or project naval forces may . . . result in nothing less than a breakdown of the global system, a significant change in our international standing, and an alteration in our established way of life.

## 2NC

### T: Prohibit 2NC

#### the aff is FX topical at best--Delays or bureaucratic hurdles are indirect limitations --- not “restrictions”

Viterbo 12 (Annamaria, Assistant Professor in International Law – University of Torino, PhD in International Economic Law – Bocconi University and Jean Monnet Fellow – European University Institute, International Economic Law and Monetary Measures: Limitations to States' Sovereignty and Dispute, p. 167)

49 Measures having the indirect effect of limiting the ease of acquiring foreign exchange do not amount to restrictions (forms or applications to be filled in). The limitation may consist for instance in compulsory waiting periods for exchange.

#### Restrictions on war power are prohibitive

David J. Barron & Martin S. Lederman, Harvard Law Review, February 2008. “THE COMMANDER IN CHIEF AT THE LOWEST EBB — A CONSTITUTIONAL HISTORY,” http://www.harvardlawreview.org/media/pdf/barron\_lederman2.pdf

251–52. Senator Edward Gurney asked what would happen if Congress had imposed such a restriction but then the President had learned of missiles in the Eastern Hemisphere that ¶ were to be fired at the U.S. Capitol within two weeks. Rehnquist’s response was revealing: he ¶ replied not that there would be a Commander in Chief override in such a case, but that the President would be “perfectly right in concluding that Congress had not intended [the prohibition] to ¶ apply to this situation.” Id. at 252. That is to say, he was prepared to read an implicit emergency exception into such a statutory limitation.

#### the aff imposes consequences to action, not restrictions

**Caiaccio 94** (Kevin T., “Are Noncompetition Covenants Among Law Partners Against Public Policy?”, Georgia Law Review, Spring, 28 Ga. L. Rev. 807, Lexis)

The Howard court began its analysis by examining the California Business and Professions Code, which expressly permits reasonable restrictive covenants among business partners. [139](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=2f902ef509c60febb5baa821f74f591c&docnum=69&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAb&_md5=13c4fa4ea4799356b6831f265d253078&focBudTerms=the+word+restrict+or+the+term+restrict+or+the+phrase+restrict+&focBudSel=all#n139) The court noted that this provision had long applied to doctors and accountants and concluded that the general language of the statute provided no indication of an exception for lawyers. [140](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=2f902ef509c60febb5baa821f74f591c&docnum=69&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAb&_md5=13c4fa4ea4799356b6831f265d253078&focBudTerms=the+word+restrict+or+the+term+restrict+or+the+phrase+restrict+&focBudSel=all#n140) After reaching this conclusion, however, the court noted that, since it had the authority to promulgate a higher standard for lawyers, the statute alone did not necessarily control, [141](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=2f902ef509c60febb5baa821f74f591c&docnum=69&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAb&_md5=13c4fa4ea4799356b6831f265d253078&focBudTerms=the+word+restrict+or+the+term+restrict+or+the+phrase+restrict+&focBudSel=all#n141) and the court therefore proceeded to examine the California Rules of Professional Conduct. [142](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=2f902ef509c60febb5baa821f74f591c&docnum=69&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAb&_md5=13c4fa4ea4799356b6831f265d253078&focBudTerms=the+word+restrict+or+the+term+restrict+or+the+phrase+restrict+&focBudSel=all#n142) The court avoided the apparent conflict between the business statute and the ethics rule by undertaking a strained reading of the rule. In essence, the court held that the word "restrict" referred only to outright prohibitions, and that a mere "economic consequence" does not equal a prohibition. [143](http://www.lexis.com/research/retrieve?y=&dom1=&dom2=&dom3=&dom4=&dom5=&crnPrh=&crnSah=&crnSch=&crnLgh=&crnSumm=&crnCt=&cc=&crnCh=&crnGc=&shepSummary=&crnFmt=&shepStateKey=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&fpSetup=0&_m=2f902ef509c60febb5baa821f74f591c&docnum=69&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAb&_md5=13c4fa4ea4799356b6831f265d253078&focBudTerms=the+word+restrict+or+the+term+restrict+or+the+phrase+restrict+&focBudSel=all#n143)

### legitimacy

### turns envt

#### legitimate court key to sustainable development- collapses civilization

Stein 5—Former Judge of the New South Wales Court of Appeal and the New South Wales Land and Environment Court [Justice Paul Stein (International Union for Conservation of Nature (IUCN) Specialist Group on the Judiciary), “Why judges are essential to the rule of law and environmental protection,” Judges and the Rule of Law: Creating the Links: Environment, Human Rights and Poverty, IUCN Environmental Policy and Law Paper No. 60, Edited by Thomas Greiber, 2006]

The Johannesburg Principles state: “We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.” There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts. Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized. A role for judges? It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### Rule of law’s crucial to uphold unipolarity and maintain hegemony --- outweighs the aff

Knowles ’09 Robert Knowles, Acting Assistant Professor, New York University School of Law, Spring, 2009, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87, American Hegemony and the Foreign Affairs Constitution, LEXIS, jj

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424

#### Turn outweighs solvency--without support independence crashes-legitimacy is a pre-requisite

Hirsch 4 (Ran Hirsch is an Associate Professor of Political Science and Law at the University of Toronto, “'Juristocracy' - Political, not Juridical,” Project Muse)

In sum, the existence of an active, non-deferential constitutional court is a necessary, but not a sufficient condition, for persistent judicial activism and the judicialization of mega politics. Assertion of judicial supremacy cannot take place, let alone be sustained, without the tacit or explicit support of influential political stakeholders. It is unrealistic, and indeed utterly naïve, to assume that core political questions such as the struggle over the nature of Canada as a confederation of two founding peoples, Israel's wrestling with the question of "who is a Jew?" and its status as a Jewish and democratic state, the struggle over the status of Islamic law in predominantly Muslim countries, or the transition to democracy in South Africa could have been transferred to courts without at least the tacit support of pertinent political stakeholders in these countries. And we have not yet said a word about the contribution of ineffective political institutions, the spread of litigation oriented NGOs, or opposition and interest group use of the courts to the judicialization of mega-politics. A political sphere conducive to judicial activism is at least as significant to its emergence and sustainability as the contribution of courts and judges. In short, judicial power does not fall from the sky. It is politically constructed. The portrayal of constitutional courts and judges as the major culprits in the all-encompassing judicialization of politics worldwide is simply too simple a tale.

### L: Must Read 2NC (:45

#### circumvention destroys judicial legitimacy and separation of powers---even unsuccessful backlash can put the entire edifice of judicial review in question

Andrew D. Martin 1, Prof of Political Science at Washington University 2001. Statuatory Battles and Constitutional Wars: Congress and the Supreme Court

But the large policy payoff in the constitutional cases. What does the ability of the President and Congress to attack through overrides or other means constitutional court decisions imply in terms of the cost of the justices bear? If an attack succeeds and the court does not back down, it effectively removes the court from the policy game and may seriously or, even irrevocably harm its reputation, credibility, and legitimacy. Indeed, such an attack would effectively remove the court from policy making, thus incurring an infinite cost. With no constitutional prescription for judicial review, this power is vulnerable, and would be severely damaged if congress and the president were effective in attack on the Court. But even if the attack is unsuccessful, the integrity of the court may be damaged, for the assault may compromise its ability to make future constitutional decisions and, thus, more long-lasting policy. One does not have to peer as far back as scott v. sandford to find examples; Bush v. Gore (2000, U.S.) may provide one. To be sure, the new President and Congress did not attack the decision, but other members of government did of course, unsuccessfully at least in terms of the ruling’s impact. Yet, there seems little doubt that the critics (not to mention the decision itself) caused some major damage to the reputation of the court, the effects of which the justices may feel in the not-so-distant future.

#### Legitimacy is on the brink---its fragile and breakable- cirvumvention pushes it over the edge

Burke 13 8/23 (Kevin Burke is a partner in Sidley's New York office. He litigates class actions and other complex disputes in the areas of securities, LLP, “How Low Public Trust Threatens the Legitimacy of Court Decisions,” http://proceduralfairnessblog.org/2013/08/23/how-low-public-trust-threatens-the-legitimacy-of-court-decisions/)

Trust is an essential component of procedural fairness, which, in turn, has been shown to be a key source of legitimacy for decision-makers. All public institutions now face serious skepticism from the public about their trustworthiness. However, a trust deficit – and the resulting lack of legitimacy – are of particular threat to the judiciary. Legitimacy is essential if courts are to be respected and, indeed, if court orders are to be obeyed. Simply put, failure to maintain and enhance the legitimacy of court decisions imperils the judiciary as an institution and the vital role assigned to the judiciary in our Constitutional tradition. The threat is real. Today, 75% of the American public thinks judges’ decisions are, to a moderate to significant extent, influenced by their political or personal philosophy. Of course, judges have a range of philosophical views and exercise discretion, so some differences of opinion among judges are to be expected. But 75% of the American public also believes judges’ decisions are, to a moderate to significant extent, influenced by their desire to be appointed to a higher court. Two recent articles explain the potentially grave implications. First, Politico recently published a contribution by law professors Charles Geyh and Stephen Gillers advocating for a bill to make the Supreme Court adopt a code of ethics. They argue: [I]t would be a mistake for the Court to view the [ethics] bill as a challenge to its power. It is rather an invitation. No rule is thrust on the justices. Under the … bill, the justices are asked to start with the code governing other federal judges, but are then free to make ‘any amendments or modifications’ they deem ‘appropriate.’ A response that says, in effect, ‘We won’t do it because you can’t make us’ will hurt the court and the rule of law. Second, Linda Gree

nhouse, a regular commentator on the New York Times Blog “Opinionator,” recently wrote this post about the Foreign Intelligence Surveillance Court entitled Too Much Work?. Greenhouse writes: As Charlie Savage reported in The Times last month, Chief Justice John G. Roberts Jr. has used that authority to name Republican-appointed judges to 10 of the court’s 11 seats. (While Republicans in Congress accuse President Obama of trying to “pack” the federal appeals court in Washington simply by filling its vacant seats, they have expressed no such concern over the fact that the chief justice has over-weighted the surveillance court with Republican judges to a considerably greater degree than either of the two other Republican-appointed chief justices who have served since the court’s creation in 1978.) What do these two pieces mean for judges? Both articles highlight how the judiciary itself, if not careful, can contribute to the erosion of public trust in our decisions. To be sure, the erosion of the legitimacy of judicial decisions is not entirely the fault of the Supreme Court, nor of judges in general. The media, for example, often refers to which President appointed a judge as a shorthand way to explain a decision. But that is, in part, why Ms. Greenhouse’s piece is important. The Chief Justice is recognized as a brilliant man. He and every other judge in the United States know the inevitable shorthand the media will use to describe judges and to explain their decisions. And so the Chief Justice, the members of the United States Supreme Court, indeed every judge in this country needs to be particularly sensitive to what we are doing that might either advance trust in courts or contribute to the erosion of the legitimacy of our courts. The bottom line is: Appearances make a difference. There will be decisions by judges at every level of court that test the public’s trust in our wisdom. It is therefore imperative that judges act in a manner that builds a reservoir of goodwill so that people will stand by courts when a decision is made with which they disagree. There may have been an era when trust in the wisdom and impartiality of judicial decisions could be taken as a given. But if there was such an era, we no longer live in it. Trust and legitimacy today must be earned.

### L: WOT 2NC

#### no link turns- judicial infringement on executive counter-terror crushes legitimacy - Israel proves

YIGAL MERSEL 6\*\* Hauser Global Researcher, Fulbright Scholar and Emile Noel Fellow at the Jean Monnet Center at NYU, JUDICIAL REVIEW OF COUNTER-TERRORISM MEASURES: THE ISRAELI MODEL FOR THE ROLE OF THE JUDICIARY DURING THE TERROR ERA INTERNATIONAL LAW AND POLITICS [Vol. 38:67] November 2006

B. Public Confidence and Court’s Legitimacy A second factor in counter-terrorism adjudication is public confidence in the Court. The public sentiment can be quite sensitive and volatile in times of national crisis,236 and it is usually the case that the public cares primarily about its own personal safety. Long-range implications for democratic val- ues seem less important. One might argue that adjudicating counter-terrorism might decrease public confidence in courts, as they are not politically accountable. This is especially foreseeable in cases where the Court actually intervenes in the executive’s enforcement actions, the way the Israeli court has done in several cases, discussed above. Furthermore, even if the Court does not actually impede counter-terrorist programs, the public might expect that only the accountable branches—the legislature and the executive—will handle counter-terrorism effectively. Indeed, adjudicating counterterrorism has a possible price-tag: people might blame the Court for handling nonjusticiable issues and interfering with issues that should be handled by other branches. In Israel, this rhetoric had even found its way to a private bill by some Knesset members, who wanted to restrict by law the power of the Supreme Court to adjudicate certain matters, including issues of state security.237 The Court itself is aware of the problem with public opinion: Part of the public will be happy with our decision; another part will oppose it. It is possible that neither the former nor the latter will read the reasoning. But we shall do our work. ‘This is our duty and this is our obligation as judges.’238 In another case, the author of the opinion wrote: I am forced to rule in accordance with the law, in complete awareness that the public at large will not be interested in the legal reasoning behind our decision, but rather in the final result. Conceivably, the status of the Court as an institution that stands above the arguments that divide the public will be damaged. But what can we do, for this is our role and our obligation as judges?239 The Court acknowledges that it is not disconnected from the Israeli reality, both in terms of public opinion and the daily concerns of average citizens: Deciding these petitions weighed heavily on this Court. True, from the legal perspective, the road before us is smooth. We are, however, part of Israeli society. Its problems are known to us and we live its history. We are not isolated in an ivory tower. We live the life of this country. We are aware of the harsh reality of terrorism in which we are, at times, immersed. The possibility that this decision will hamper the ability to properly deal with terrorists and terrorism disturbs us. We are, however, judges. We must decide according to the law.240 Indeed, the Court is aware that, in the short term, its broad scope of judicial review might result in sinking public confidence in the Court.241 Yet it is willing to accept this partial disapproval because it believes its democratic duty is to rule for certain outcomes.242 Displeasing some people is a natural result of adjudicating any conflict. It seems as if the court assumes that, in the long term, these rulings will reinforce the public confidence in the Court as a stabilizing institution in times of crisis.243

### A2 “Legitimacy Resil”

#### Legitimacy is a limited resource--it must be preserved

Richard Pacelle, Research Professor in Political Science, 2002 (THE ROLE OF THE SUPREME COURT IN AMERICAN POLITICS: THE LEAST DANGEROUS BRANCH, p. 29)

According to Christopher Smith, the legitimacy issue underlying judicial policy making rests on the appropriateness of the judiciary, actions in formulating and implementing public policies.' Legitimacy is a political resource. It is fragile and finite, and the Court must conserve and protect it. If the Court oversteps its boundaries, its decisions will not earn the respect of the public or the other branches of government, and its ultimate resource, its legitimacy, will be threatened.

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### adv 2

### Defer Ans: Inevitable—1NC

#### Deference inevitable---it’s institutionally locked in, the judiciary wants it, \* and the aff doesn’t clarify multiple constitutional issues

Jonathan L. Entin 12, Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University. War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations, 45 Case W. Res. J. Int'l L. 443

To be sure, the Supreme Court has decided some well-known national security cases. Among them are the Steel Seizure case, Youngstown Sheet & Tube Co. v. Sawyer; n2 the Pentagon Papers case, New York Times Co. v. United States; n3 the Iranian hostage case, Dames & Moore v. Regan; n4 and some notable First Amendment cases arising out of World War I, such as Schenck v. United States n5 and Abrams v. United States. n6 Then there are the Japanese internment decisions during World War II, notably Korematsu v. United States, n7 as well as Ex parte Quirin, n8 which upheld the use of military commissions to try German agents who landed in the United States as part of a sabotage mission. Most recently, the Supreme Court has addressed questions arising from the government's response to the attacks of September 11, 2001, in such cases as Hamdi v. Rumsfeld, n9 Hamdan v. Rumsfeld, n10 and Boumediene v. Bush. n11 These cases do matter, but they have not clearly resolved the constitutional and other legal issues that pervade the debate about presidential power and foreign affairs.

Beyond the limitations of the Supreme Court rulings, the judiciary probably will not contribute very much to the debate. Various procedural and jurisdictional obstacles make it difficult for courts to address the merits of disputes about war powers and foreign affairs. Even if those obstacles can be surmounted, those who decry what they view as presidential excess should note that the judiciary typically has taken a deferential role in reviewing challenges to executive action.

#### There’s no chance the plan spills over---all federal courts are either siding with the executive’s terror policies through narrow rulings or declining to even hear the cases---the plan will just be distinguished away

Jonathan L. Entin 12, Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University. War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations, 45 Case W. Res. J. Int'l L. 443

Although these procedural and jurisdictional barriers to judicial review can be overcome, those who seek to limit what they regard as executive excess in military and foreign affairs should not count on the judiciary to serve as a consistent ally. The Supreme Court has shown substantial deference to the president in national security cases. Even when the Court has rejected the executive's position, it generally has done so on relatively narrow grounds.¶ Consider the Espionage Act cases that arose during World War I. Schenck v. United States, n63 which is best known for Justice Holmes's [\*452] announcement of the clear and present danger test, upheld a conviction for obstructing military recruitment based on the defendant's having mailed a leaflet criticizing the military draft although there was no evidence that anyone had refused to submit to induction as a result. Justice Holmes almost offhandedly observed that "the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out." n64 The circumstances in which the speech took place affected the scope of First Amendment protection: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right." n65 A week later, without mentioning the clear and present danger test, the Court upheld the conviction of the publisher of a German-language newspaper for undermining the war effort n66 and of Eugene Debs for a speech denouncing the war. n67 Early in the following term, Justice Holmes refined his thinking about clear and present danger while introducing the marketplace theory of the First Amendment in Abrams v. United States, n68 but only Justice Brandeis agreed with his position. n69 The majority, however, summarily rejected the First Amendment defense on the basis of Holmes's opinions for the Court in the earlier cases. n70¶ Similarly, the Supreme Court rejected challenges to the government's war programs during World War II. For example, the Court rebuffed a challenge to the use of military commissions to try German saboteurs. n71 Congress had authorized the use of military tribunals in such cases, and the president had relied on that authorization in directing that the defendants be kept out of civilian courts. n72 In addition, the Court upheld the validity of the Japanese internment program. n73 Of course, the Court did limit the scope of the [\*453] program by holding that it did not apply to "concededly loyal" citizens. n74 But it took four decades for the judiciary to conclude that some of the convictions that the Supreme Court had upheld during wartime should be vacated. n75 Congress eventually passed legislation apologizing for the treatment of Japanese Americans and authorizing belated compensation to internees. n76¶ The Court never directly addressed the legality of the Vietnam War. The Pentagon Papers case, for example, did not address how the nation became militarily involved in Southeast Asia, only whether the government could prevent the publication of a Defense Department study of U.S. engagement in that region. n77 The lawfulness of orders to train military personnel bound for Vietnam gave rise to Parker v. Levy, n78 but the central issue in that case was the constitutionality of the provisions of the Uniform Code of Military Justice that were the basis of the court-martial of the Army physician who refused to train medics who would be sent to the war zone. n79 The few lower courts that addressed the merits of challenges to the legality of the Vietnam War consistently rejected those challenges. n80¶ The picture in the post-2001 era is less clear. In three different cases the Supreme Court has rejected the executive branch's position, but all of those rulings were narrow in scope. For example, Hamdi v. Rumsfeld n81 held that a U.S. citizen held as an enemy combatant must be given a meaningful opportunity to have a neutral decision-maker determine the factual basis for his detention. There was no majority opinion, however, so the implications of the ruling were ambiguous to say the least. Justice O'Connor's plurality opinion for four members of the Court concluded that Congress had authorized the president to detain enemy combatants by passing the Authorization for Use of Military Force n82 and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. [\*454] citizens. n83 Justice Souter, joined by Justice Ginsburg, thought that the AUMF had not in fact authorized the detention of American citizens as required by the statute, n84 which suggested that Hamdi should be released. But the Court would have been deadlocked as to the remedy had he adhered to his view of how to proceed. This was because Justices Scalia and Stevens also believed that Hamdi's detention was unlawful and that he should be released on habeas corpus, n85 whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief. n86 This alignment left four justices in favor of a remand for more formal proceedings, four other justices in favor of releasing Hamdi, and one justice supporting the government's detention of Hamdi with no need for a more elaborate hearing. To avoid a deadlock, therefore, Justice Souter reluctantly joined the plurality's remand order. n87¶ Hamdi was atypical because that case involved a U.S. citizen who was detained. The vast majority of detainees have been foreign nationals. In Hamdan v. Rumsfeld, n88 the Supreme Court ruled that the military commissions that the executive branch had established in the wake of the September 11 attacks had not been authorized by Congress and therefore could not be used to try detainees. n89 A concurring opinion made clear that the president could seek authorization from Congress to use the type of military commissions that had been established unilaterally in this case. n90¶ Congress responded to that suggestion by enacting the Military Commissions Act of 2006, n91 which sought to endorse the executive's detainee policies and to restrict judicial review of detainee cases. In Boumediene v. Bush, n92 the Supreme Court again rejected the government's position. First, the statute did not suspend the writ of [\*455] habeas corpus. n93 Second, the statutory procedures for hearing cases involving detainees were constitutionally inadequate. n94 At the same time, the Court emphasized that the judiciary should afford some deference to the executive branch in dealing with the dangers of terrorism n95 and should respect the congressional decision to consolidate judicial review of detainee cases in the District of Columbia Circuit. n96¶ Detainees who have litigated in the lower federal courts in the District of Columbia have not found a sympathetic forum. The U.S. Court of Appeals for the D.C. Circuit has not upheld a single district court ruling that granted any sort of relief to detainees, and the Supreme Court has denied certiorari in every post-Boumediene detainee case in which review was sought. n97 In only one case involving a detainee has the D.C. Circuit granted relief, and that case came up from a military commission following procedural changes adopted in the wake of Boumediene. n98 About a month after this symposium took place, in Hamdan v. United States n99 the court overturned a conviction for providing material support for terrorism. The defendant was the same person who successfully challenged the original military commissions in Hamdan v. Rumsfeld. n100 This very recent ruling emphasized that the statute under which he was prosecuted did not apply to offenses committed before its enactment. n101 It remains to be seen how broadly the decision will apply. [\*456] ¶ Meanwhile, other challenges to post-2001 terrorism policies also have failed, and the Supreme Court has declined to review those rulings as well. For example, the lower courts have rebuffed claims asserted by foreign nationals who were subject to extraordinary rendition. In Arar v. Ashcroft, n102 the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of constitutional and statutory challenges brought by a plaintiff holding dual citizenship in Canada and the United States. n103 And in Mohamed v. Jeppesen Dataplan, Inc., n104 the U.S. Court of Appeals for the Ninth Circuit held that the state-secrets privilege barred a separate challenge to extraordinary rendition brought by citizens of Egypt, Morocco, Ethiopia, Iraq, and Yemen. n105 Unlike Arar, in which the defendants were federal officials, n106 this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture. n107 Although at least four judges on the en banc courts dissented from both rulings, n108 the Supreme Court declined to review either case. n109

### envt

#### alt causes

***Biodiversity resilient – ecosystems will quickly recover from damage***

**McDermott** 20**09** (Mat, Editor for Business and Energy sections; Master Degree from NYU’s Center for Global Affairs in environment and energy policy. May, 27, 2009: “Good News: Most Ecosystems Can Recover in One Lifetime from Human-Induced or Natural Disturbance”; <http://www.treehugger.com/natural-sciences/good-news-most-ecosystems-can-recover-in-one-lifetime-from-human-induced-or-natural-disturbance.html>)

**There's a reason the phrase "let nature take its course" exists**: New research done at the Yale University School of Forestry & Environmental Science reinforces the idea that **ecosystems are quiet resilient and can rebound from pollution and environmental degradation**. Published in the journal PLoS ONE, the study shows that **most damaged ecosystems worldwide can recover within a single lifetime**, if the source of pollution is removed and restoration work done. The analysis found that **on average forest ecosystems can recover in 42 years, while in takes only about 10 years for the ocean bottom to recover**. If an area has seen multiple, interactive disturbances, it can take on average 56 years for recovery. In general, most ecosystems take longer to recover from human-induced disturbances than from natural events, such as hurricanes.

To reach these recovery averages, the researchers looked at data from peer-reviewed studies over the past 100 years on the rate of ecosystem recovery once the source of pollution was removed.

Interestingly, the researchers found that **it appears that the rate at which an ecosystem recovers may be independent of its degraded condition: Aquatic systems may recover more quickly than, say, a forest, because the species and organisms that live in that ecosystem turn over more rapidly than in the forest.**

As to what this all means, Oswald Schmitz, professor of ecology at Yale and report co-author, says that this analysis shows that an increased effort to restore damaged ecosystems is justified, and that:

Restoration could become a more important tool in the management portfolio of conservation organizations that are entrusted to protect habitats on landscapes.

We recognize that **humankind has and will continue to actively domesticate nature to meet its own needs**. The message of our paper is that **recovery is possible and can be rapid for many ecosystems**, giving much hope for a transition to sustainable management of global ecosystems.

### Nanotech 2NC

#### give it zero risk

oxidization, laws of thermodynamics, no experimental support, hype, at best hudreds of eyars away,

Locklin 10 Physicist specializing in Quantitative Finance, PhD UC Davis, “Nano-nonsense: 25 years of charlatanry” http://scottlocklin.wordpress.com/2010/08/24/nano-nonsense-25-years-of-charlatanry/ [EDymit]

I used to work next to the center for nanotechnology. The first indication I had that there was something wrong with the discipline of “nanotechnology” is I noticed that the people who worked there were the same people who used to do chemistry and material science. It appeared to be a more fashionable label for these subjects. Really “material science” was a sort of fancy label for the chemistry of things we use to build other things. OK, new name for “chemist.” Hopefully it ups the funding. Good for you guys.¶ Later on, I actually read Drexler’s Ph.D. thesis which invented the subject. I can sum it up thusly:¶ Behold, the Schroedinger equation! ¶ With this mighty equation we may go forth and invent an entirely new form of chemistry, with which we may create new and superior forms of life which are mechanical in their form, rather than squishy inefficient biological looking things. We shall use the mighty powers of the computer to do these things! It shall bring forth many great marvels!¶ That’s it. That’s what the whole book is. Oh yes, there are a few collections of intimidating tables and graphs purporting to indicate that such a thing might be possible, and Drexler does sketch out some impressive looking mechanical designs of what he supposes a nanobot might look like, but, without more than a passing justification. He seems to lack the imagination, and of course, the physics to figure out what a real nanosized doodad might look like. Much of his thesis seems to be hand wavey arguments that his “looking rather a lot like a meter scale object” designs would work on a nano or small microscale. I know for a fact that they will not. You can wave your hands around all you want; when you stick an atomic force microscope down on nanosized thingees, you know what forces they produce. They don’t act like macro-objects, at all. Drexler would also occasionally notice that his perfect little robots would probably, you know, oxidize, like most reactive things do, and consign them to Ultra High Vacuum chambers in a fit of embarrassment. Then sometimes he would forget about the chemical properties of oxygen, and enthusiastically stick them everywhere. None of the chemistry you’d need to figure out to even begin to do this was done in his book. Little real thought was given to thermodynamics or where the energy was coming from for all these cool Maxwell-Demon like “perpetual motion” reactions. It was never noticed that computational chemistry (aka figuring out molecular properties from the Schroedinger equation) is basically useless. Experimental results were rarely mentioned, or explained away with the glorious equation of Schroedinger, with which, all things seemed possible. Self assembly was deemed routine, despite the fact that nobody knows how to engineer such thing using macroscopic objects.¶ There is modern and even ancient nano sized tech; lithographic electronic chip features are down to this size now, and of course, materials like asbestos were always nano sized. As far as nano objects for manipulating things on nanoscales; such things don’t exist. Imagining self replicating nanobots or nano machines is ridiculous. We don’t even have micromachines. Mechanical objects on microscales do not exist. On

, everything that I have seen is lithographically etched, or made on a watchmakers lathe. Is it cool? Yep; it’s kind of cool. I have already worked for a “millitech” company which was going to use tiny accelerometers to do sensing stuff in your cell phone. Will it change the universe? Nope. Millitech miniaturization has been available for probably 300 years now (assuming the Greeks didn’t have it); lithography just allows us to mass produce such things out of different materials.¶ This is an honest summary of Drexler’s Ph.D. thesis/book, and with that, a modest act of imagination, accompanied by a tremendous act of chutzpah, and a considerable talent for self promotion, he created what must be the most successful example of “vaporware” of the late 20th and early 21st century. The “molecular foundry” or “center for nanotechnology” or whatever nonsense name they’re calling the new chemistry building at LBL is but the tip of the iceberg. There are government organizations designed to keep up America’s leadership in this imaginary field. There are zillionaire worryworts who are afraid this mighty product of Drexler’s imagination will some day turn us all into grey goo. There are news aggregators for this nonexistent technology. There are even charlatans with foundations promoting, get this, “responsible nanotech.” All this, for a technology which can’t even remotely be thought of as existing in even pre-pre-prototype form. It is as if someone read Isaac Asimov’s books on Robots of the future (written in the 1950s) and thought to found government labs and foundations and centers to responsibly deal with the implications of artificial intelligence from “positronic brains.” ¶ You’d think such an endeavor would have gone on for, I don’t know, a few years, before everyone realized Drexler was a science fiction author who doesn’t do plot or characterization. Nope; this insanity has gone on for 25 years now. Generations of academics have spent their entire careers on this subject, yet not a single goal or fundamental technology which would make this fantasy a remote possibility has yet been developed. Must we work on it for another 25 years before we realize that we can’t even do the “take the Schroedinger equation, figure out how simple molecules stick together” prerequisites which are a fundamental requirement for so called molecular engineering? How many more decades or centuries of research before we can even create a macroscopic object which is capable of the feat of “self replication,” let alone a self replicator which works at length scales which we have only a rudimentary understanding of? How many more cases of nincompoops selling “nanotech sunscreen” or “nanotech water filters” using the “nanotechnology” of activated carbon; must I endure? How many more CIA reports on the dangers of immanent nanoterrorism must my tax dollar pay for, when such technologies are, at best, centuries away? How many more vast coffers of government largesse shall we shower on these clowns before we realize they’re selling snake oil?¶ Drexler’s answer to all this is, since nobody can disprove the necessary things to develop nanotech, they will be developed. Well, that depends what you mean by the words “can” and “disprove.” It also depends on what your time scale is. I’m willing to bet, at some nebulous point in the future, long after Drexler and I are dead, someone may eventually develop a technology sort of vaguely like what he imagines. At least the parts that don’t totally violate the laws of thermodynamics and materials physics (probably, most of the details do). As an argument, “you can’t disprove my crazy idea” doesn’t hold much water with me. Doubtless there are many denizens of the booby hatch who claim to be Jesus, and I can’t really disprove any of them, but I don’t really see why I should be required to. ¶ I have nothing against there being a few people who want to achieve some of the scientific milestones needed to accomplish “nanotech.” I have a great deal against charlatans who claim that we should actually invest significant resources into this crazy idea. If you’re an investor, and somebody’s prospectus talks about “nano” anything, assuming they’re not selling you a semiconductor fab, you can bet that they are selling you snake oil. There is no nanotech. Stop talking about it. Start laughing at it. As Nobel prize winning chemist Richard Smalley put it to Drexler: “No, you don’t get it. You are still in a pretend world where atoms go where you want because your computer program directs them to go there.”

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order succeeded, in part, because it incentivized great power involvement in key institutions. From the UN Security Council, to the Bretton Woods institutions, to the Non-Proliferation Treaty, key pillars of the global order explicitly grant special privileges to the countries that were wealthy and powerful at the time of their creation. This hierarchy was necessary to secure the participation of the most important countries in global governance. Today, the gain from this trade-off has shrunk while the costs have grown. **As power shifts from West to East, North to South, a broader range of participation is needed** on nearly all global issues if they are to be dealt with effectively. At the same time, following decolonization, the end of the Cold War and economic development, **the idea that some countries should hold more rights and privileges than others is increasingly** (and rightly) **regarded as morally bankrupt**. And **yet, the architects of the postwar order did not**, in most cases, **design institutions that would organically adjust to fluctuations in national power**. **Harder problems**. As independence has deepened, **the types and scope of problems around which countries must cooperate has evolved**. **Problems are both now more extensive**, implicating a broader range of countries and individuals within countries, **and intensive**, penetrating deep into the domestic policy space and daily life. Consider the example of trade. For much of the postwar era, trade negotiations focused on reducing tariff levels on manufactured products traded between industrialized countries. Now, however, negotiating a trade agreement requires also discussing a host of social, environmental, and cultural subjects - GMOs, intellectual property, health and environmental standards, biodiversity, labour standards—about which countries often disagree sharply. In the area of environmental change a similar set of considerations applies. To clean up industrial smog or address ozone depletion required fairly discrete actions from a small number of top polluters. By contrast, **the threat of climate change and the efforts to mitigate it involve nearly all countries of the globe**. **Yet, the divergence of voice and interest within both the developed and developing worlds, along with the sheer complexity of the incentives** needed to achieve a low carbon economy, **have made a global deal, thus far, impossible** ( Falkner et al. 2011; Victor 2011). **Fragmentation**. The institution-builders of the 1940s began with, essentially, a blank slate. But **efforts to cooperate internationally today occur in** **a dense institutional ecosystem shaped by path dependency**. The **exponential rise in** both multilateral and transnational **organizations has created a more complex multilevel and multi-actor system of global governance.** Within this dense web of institutions mandates can conflict, **interventions are frequently uncoordinated**, and all too typically **scarce resources are subject to intense competition**. In this context, the proliferation of institutions tends to lead to dysfunctional fragmentation, reducing the ability of multilateral institutions to provide public goods. When funding and political will are scarce, countries need focal points to guide policy (Keohane and Martin 1995), which can help define the nature and form of cooperation. Yet, when international regimes overlap, these positive effects are weakened. **Fragmented institutions**, in turn, **disaggregate resources and political will, while increasing transaction costs.** In stressing four pathways to gridlock we emphasize the manner in which contemporary global governance problems build up on each other, although different pathways can carry more significance in some domains than in others. The **challenges now faced by the multilateral order are substantially different from those faced** by the 1945 victors **in the postwar settlement**. They are second-order cooperation problems arising from previous phases of success in global coordination. Together, they now block and inhibit problem solving and reform at the global level.

**THREE—treaty law and compliance irrelevant—history proves**

Kenneth **Waltz**, Professor at Columbia University,” Structural Realism after the Cold War,” International Security 25 (1), **2K**, p. 26-27

What is true of NATO holds for international institutions generally. **The effects that international institutions** may have on national decisions **are but one step removed from the capabilities and intentions of the major state** or states **that gave them birth and sustain them**. The **Bretton Woods** system strongly affected individual states and the conduct of international affairs. But when **the United States found that the system no longer served its interests**, the **Nixon shocks of 1971 were administered**. International institutions are created by the more powerful states, and the **institutions survive in their original form as long as they serve the major interests of their creators**, or are thought to do so. ”The nature of **institutional arrangements**,“ as Stephen Krasner put it, ”**is** better **explained by the distribution of national power capabilities** than by efforts to solve problems of market failure“61—or, I would add, by anything else.¶ Either international conventions, **treaties**, and institutions **remain close to the underlying distribution of national capabilities or they court failur**e.62 **Citing examples from the past 350 years, Krasner found that in all of the instances ”it was the value of strong states that dictated rule**s that were applied in a¶ discriminating fashion only to the weak.“63 The **sovereignty** of nations, a universally recognized international institution, **hardly stands in the way of a strong nation that decides to intervene in a weak one**. Thus, according to a senior offcial, the Reagan administration ”debated whether we had the right to dictate the form of another country’s government. **The bottom line was yes, that some rights are more fundamenta**l than the right of nations to noninter- vention. . . . We don’t have the right to subvert a democracy but we do have the right against an undemocratic one.“64 Most international law is obeyed most of the time, but **strong states bend or break laws when they choose to.**

### Warming—Ext 1--Adaptation 2NC (:40

#### Tech advances faster than feedbacks

Indur **Goklany**, PhD., “Misled on Climate change: How the UN IPCC (and others) Exaggerate the Impacts of Global Warming,” POLICY STUDY n. 399, Reason Foundation, 12—**11**, 12.

The second major reason why future adaptive capacity has been underestimated (and the impacts of global warming systematically overestimated) is that few impact studies consider secular technological change.25 Most assume that no new technologies will come on line, although some do assume greater adoption of existing technologies with higher GDP per capita and, much less frequently, a modest generic improvement in productivity. Such an assumption may have been appropriate during the Medieval Warm Period, when the pace of technological change was slow, but nowadays technological change is fast (as indicated in Figures 1 through 5) and, arguably, accelerating. It is unlikely that we will see a halt to technological change unless so-called precautionary policies are instituted that count the costs of technology but ignore its benefits, as some governments have already done for genetically modified crops and various pesticides.

#### Geoengineering solves

Kenny **Hodgart**, “Chop and Change,” SOUTH CHINA MORNING POST, 5—13—**12**, p. 28+.

Research is already being carried out on the viability of geoengineering - a catch-all term for technologies that sequester CO2 or other greenhouse gases from the atmosphere or cool the planet through solar radiation management - while more resources can and, for reasons quite apart from rising sea levels, probably should be invested in sea and flood defences around the world. After all, the Dutch mastered this aspect of hydraulics in the 16th century. Former British chancellor Nigel Lawson, who chairs the London-based sceptic think tank The Global Warming Policy Foundation, has written that, "adaptation will enable us, if and when it is necessary, greatly to reduce the adverse consequences of global warming, at far less cost than mitigation [emissions reduction], to the point where for the world as a whole, these are unlikely greatly to outweigh (if indeed they outweigh at all) the customarily overlooked benefits of global warming".

## 1NR

### Deterrence M 2NC

#### Flex NB – make it hard to intervene – that’s bad

#### the threat to intervene key to deterrence- checks nuke war

**Gerson and Whiteneck 2009**, Research analysts @ Center for Naval Analyses, a federally funded research center, where he focuses on deterrence, nuclear strategy, counterproliferation, and arms control [Michael Gerson (M.A. in International Relations from the University of Chicago) & Daniel Whiteneck, “Deterrence and Influence: The Navy's Role in Preventing War,” CNA Analysis and Solutions, March 2009

 In the current international security environment, conventional deterrence can be useful for deterring both non-nuclear and nuclear-armed adversaries. For regimes that do not possess nuclear (or chemical and/or biological) weapons, U.S. conventional capabilities are likely to be the most credible and potent deterrent. In general, it appears that many non-WMD-armed states are not intimidated by an opponent's nuclear capabilities. For example, nuclear weapons did not give the United States significant advantages before or during the Korean and Vietnam wars; nor did they deter Egypt from attacking Israel in the 1973 Yom Kippur War or Argentina from attacking the British-controlled Falkland Islands in 1982. " This is due in part to the perceived impact of the "nuclear taboo" - a moral and political aversion to using nuclear weapons that has emerged since the Second World War. This taboo reduces the credibility - and therefore the utility - of nuclear weapons, especially against regimes that do not have nuclear weapons or other forms of WMD.4 Although implicit or explicit nuclear threats may lack credibility against non-WMD regimes, many current and potential adversaries do believe that the United States will use conventional firepower, especially because we have significant conventional superiority and a demonstrated willingness to use it. \* Consequently, when dealing with non-WMD-related threats, conventional deterrence will be the most credible mechanism for deterring undesired actions. Conventional deterrence also plays an important role in deterring non-nuclear aggression by nuclear-armed regimes. Regional nuclear proliferation might increase not only the chances of nuclear weapons use, but, equally important, the possibility of conventional aggression and mischief below the nuclear threshold. The potential for conventional conflict under the shadow of mutual nuclear deterrence was a perennial concern throughout the Cold War, and this scenario remains relevant today. A future nuclear-armed adversary may be emboldened to use conventional force against U.S. friends and allies, or to sponsor terrorism, in the belief that its nuclear capabilities provide it with an effective deterrent shield against U.S. retaliation and/or intervention in regional conflicts.h In this context, conventional deterrence can be an important mechanism to foreclose options for opportunistic regional aggression. Given current U.S. force advantages, a state is more likely to attack its neighbors if the regime believes that it can accomplish its objectives before substantial U.S. forces can be deployed to the theater. In other words, a nuclear-armed regime may be more likely to undertake conventional aggression if it believes that a favorable local balance of power provides an opportunity for a "fait accompli" whereby the regime strikes quickly and achieves victory before the United States can intervene. The hope is that, after achieving a relatively quick and inexpensive victory and making explicit or implicit nuclear threats, American (and perhaps coalition) forces would choose not to intervene. By deploying robust conventional forces in and around the theater of potential conflict, the United States can credibly signal that its forces can respond to conventional aggression at the outset, and therefore the regime cannot hope to accomplish a fait accompli buttressed by nuclear threats. Moreover, if the United States can convince an opponent that U.S. forces will be engaged at the outset of hostilities - and therefore sustain the human and financial costs of war from the beginning - it can help convince opponents that we would be highly resolved to fight even in the face of nuclear threats because American blood and treasure would have already been expended. Similar to the ("old War, the deployment of conventional power in the region, combined with significant nuclear capabilities (and, today, Ballistic Missile Defense), can provide a powerful deterrent to aggression below the nuclear threshold.

### L: JR 2NC

#### The prospect of judicial involvement causes battlefield risk aversion---TK decisions are made in split-seconds---any delay has massive negative effects on missions

Larry Maher 10, Quartermaster General, Veterans of Foreign Wars, et al, 9/30/10, BRIEF OF THE VETERANS OF FOREIGN WARS OF THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS AND DISMISSAL, Nasser al-Aulaqi, Plaintiff, vs. Barack H. Obama, et al., Defendants, <http://www.lawfareblog.com/wp-content/uploads/2010/10/VFW_Brief_PACER.pdf>

War is the province of chance. “If we now consider briefly the subjective nature of war—the means by which war has to be fought—it will look more than ever like a gamble . . . [i]n the whole range of human activities, war most closely resembles a game of cards.” Clausewitz, 86-87. Within this field of human endeavor, the most successful armies are those led by decisive commanders who visualize the operational environment and make rapid, sound decisions. Combat leadership involves the motivation of others to risk their lives, and only the most decisive and confident leaders can inspire this kind of self-sacrifice.¶ Leadership is the multiplying and unifying element of combat power. Confident, competent, and informed leadership intensifies the effectiveness of all other elements of combat power by formulating sound operational ideas and assuring discipline and motivation in the force . . . Leadership in today’s operational environment is often the difference between success and failure.¶ Dept. of the Army, Field Manual 3-0, Operations, at ¶¶ 4-6 - 4-8 (2008), available at http://www.army.mil/fm3-0/fm3-0.pdf.¶ Battle command is a subset of combat leadership—it is how wartime leaders operationalize their intent and transmit their guidance to subordinate units. Battle command is the art and science of understanding, visualizing, describing, directing, leading, and assessing forces to impose the commander’s will on a hostile, thinking, and adaptive enemy. Battle command applies leadership to translate decisions into actions—by synchronizing forces and warfighting functions in time, space, and purpose—to accomplish missions. Battle command is guided by professional judgment gained from experience, knowledge, education, intelligence, and intuition. It is driven by commanders.¶ Id. at ¶ 5-9. Battlefield decisionmaking involves the visualization of the battlefield and all its components, the deliberate assessment of operational risk, and the selection of a course of action which accepts certain risks in order to achieve tactical, operational or strategic success. Id. at ¶5-10; see also Gen. Frederick M. Franks, Jr., Battle Command: A Commander’s Perspective, Military Review, May-June 1996, at 120-121. “Given the inherently uncertain nature of war, the object of planning is not to eliminate or minimize uncertainty but to foster decisive and effective action in the midst of such uncertainty.” Army Field Manual 3-07, Stability Operations, at ¶ 4-4 (2008), available at http://usacac.army.mil/cac2/repository/FM307/FM3- 07.pdf.¶ In bringing this case, Plaintiff asks this Court to substitute itself as the battlefield commander, and to second-guess the strategic, operational and tactical decisions made by this nation’s military chain of command in the campaign against Al Qaeda. Judicial decisionmaking is incompatible with military decisionmaking. Rather than produce rapid, confident, decisive actions, judicial resolution of this matter would produce deliberate and measured decisions which are the product of adversarial process, and which would reflect judicial considerations, not strategic or tactical ones.¶ Also, judicial involvement may induce risk aversion among commanders, who would worry about how their actions might be judged in courtrooms far removed from the battlefield, and thus hedge their battlefield decisions in order to protect themselves and their units from future judicial scrutiny. This is particularly true of Plaintiff’s prayer for relief, which calls upon the Court to enjoin the Government from using lethal force “except in circumstances in which they present concrete, specific, and imminent threats to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threats.” Such decisions about the use of force can often be made by soldiers in a split-second, on the basis of intuition and training. The specter of judicial involvement will affect the way soldiers and leaders approach these decisions, potentially complicating and slowing their decisions by injecting judicial considerations which have no place on the battlefield.

### Space Weapons 1NC

#### Deterrence checks space weapon usage

**Shixiu, 2007**, Bao, senior fellow of military theory studies and international relations at the Institute for Military Thought Studies, Academy of Military Sciences of the PLA of China. He formerly served as director of the Institute. He recently was a visiting scholar at the Virginia Military Institute in the United States. His research focuses on China-U.S. relations in the field of comparative security strategies and the application of deterrence theory. “Deterrence Revisited: Outer Space\*,” pdf, KHaze

It is a well-known phenomenon that the use of nuclear weapons is considered taboo. Along with the doctrine of mutual assured destruction, the use of nuclear weapons in war is almost unimaginable. The utilitization of nuclear weapons is therefore almost entirely limited to a role of deterrence. What about the taboo of space weapons? More and more specialists are looking at the impact of space debris thatresults from the use of space weapons.10 Large amounts of space debris caused by space weapons will invariably threaten space assets of all space-faring countries, not just intended target countries. Any attack by one country against another using space weapons will result in many losers. With so much of commercial, scientific and military activity increasingly reliant on space, there exists a considerable and growing taboo against using space weapons in a situation of conflict. Thus, under the conditions of American strategic dominance in space, reliable deterrents in space will decrease the possibility of the United States attacking Chinese space assets. At a fundamental level, space weapons – like nuclear weapons – will not alter the essential nature of war. Throughout history, there has been much ink spilled over new weapons that have the unique power and ability to change the underlying quality of war. For example, military theorists once exaggerated the tank’s role in deciding the war’s outcome during World War I.11 The atom bomb itself is probably the most salient example, as many analysts and politicians described the weapon as the unique ultimate weapon.12 But this was a fundamental misunderstanding of war and its implements. Nuclear weapons crossed a threshold in terms of their immense capacity for destruction. But deterrence, mutual assured destruction and the nuclear taboo evolved to consign the use of nuclear weapons to a near impossibility, negating its utility as a tool of war-fighting. Weapons to change the nature of war have not emerged in the past and will not emerge in the future. As such, space weapons will not be the ultimate weapon nor will they be able to decide the outcome of war, even if they are used as a first strike.

### China-US War 1NC

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#### Interdependence checks

**Perry & Scowcroft, 9** – \*Professor at Stanford University, \*\*Resident Trustee of the Forum for International Policy (William & Brent, 2009, “US Nuclear Weapons Policy,” Council on Foreign Relations)

Economic interdependence provides an incentive to avoid militaryconflictand nuclear confrontation. Although the United States has expressed concern about the growing trade deficit with China, the economies of the two countries have become increasingly intertwined and interdependent. U.S. consumers have bought massive quantities of cheap Chinese goods, and Beijing has lent huge amounts of money to the UnitedStates. Similarly, Taiwan and the mainland are increasingly bound in a reciprocal economic relationship. These economic relation- ships should reduce the probability of a confrontation between China and Taiwan, and keep the United States and China from approach- ing the nuclear brink, were such a confrontation to occur. On other nuclear issues, China and the United States have generally supported each other, as they did in the six-party talks to dismantle North Korea’s nuclear weapons programs. Here, the supportive Beijing-Washington relationship points toward potentially promising dialogues on larger strategic issues.

### Africa War--1NC

#### No escalation

Adusei, energy expert – Swedish University of Agricultural Sciences, 1/6/’12

(Lord Aikins, “Global Energy Security and Africa's rising Strategic Importance,” <http://www.modernghana.com/news/370533/1/global-energy-security-and-africas-rising-strategi.html>)

Additionally, the prospect of major inter-state conflict in Africa involving the use of deadly weapons that could destabilise oil and gas supply looks relatively distant. Few African countries possess the destructive war machines that Middle Eastern countries have acquired over the last 10 to 20 years. In 2010 for example Saudi Arabia purchased $60 billion worth of U.S. military hardware which experts believe is geared towards countering Iran's arms build up. Again most of Africa's oil is located offshore and could be exploited and transported relatively easily with very little contact with the local population. By way of distance the parts of Africa where most of the oil and gas are located is relatively closer to the U.S. making cost of transportation and the security associated with it relatively less expensive. These factors make oil and gas from Africa more reliable than say the Middle East and remain some of the main reasons why Africa's strategic importance is growing among oil and gas importers.

Low risk of conflict—prefer quantitative methodology

Posner 8— Associate Professor of Political Science at UCLA— James Habyarimana is Assistant Professor of Public Policy at Georgetown University—Macartan Humphreys is Assistant Professor of Political Science at Columbia University—Jeremy Weinstein is Assistant Professor of Political Science at Stanford University. (Daniel, Is Ethnic Conflict Inevitable? Parting Ways Over Nationalism and Separatism, Foreign Affairs. New York: /2008. Vol. 87, Iss. 4; pg. 138, ProQuest)

If correct, his conclusion has profound implications both for the likelihood of peace in the world and for what might be done to promote it. But is it correct? Do ethnic divisions inevitably generate violence? And why does ethnic diversity sometimes give rise to conflict? In fact, ethnic differences are not inevitably, or even commonly, linked to violence on a grand scale. The assumption that because conflicts are often ethnic, ethnicity must breed conflict is an example of a classical error sometimes called "the base-rate fallacy." In the area of ethnic conflict and violence, this fallacy is common. To assess the extent to which Muller falls prey to it, one needs some sense of the "base." How frequently does ethnic conflict occur, and how often does it occur in the context of volatile mismatches between ethnic groups and states? A few years ago, the political scientists James Fearon and David Laitin did the math. They used the best available data on ethnic demography for every country in Africa to calculate the "opportunities" for four types of communal conflict between independence and 1979: ethnic violence (which pits one group against another), irredentism (when one ethnic group attempts to secede to join co-ethnic communities in other states), rebellion (when one group takes action against another to control the political system), and civil war (when violent conflicts are aimed at creating a new ethnically based political system). Fearon and Laitin identified tens of thousands of pairs of ethnic groups that could have been in conflict. But they did not find thousands of conflicts (as might have been expected if ethnic differences consistently led to violence) or hundreds of new states (which partition would have created). Strikingly, for every one thousand such pairs of ethnic groups, they found **fewer than three incidents** of violent conflict. Moreover, with few exceptions, African state boundaries today look just as they did in 1960. Fearon and Laitin concluded that communal violence, although horrifying, is extremely rare. The base-rate fallacy is particularly seductive when events are much more visible than nonevents. This is the case with ethnic conflict, and it may have led Muller astray in his account of the triumph of European nationalism. He emphasizes the role of violence in homogenizing European states but overlooks the peaceful consolidation that has resulted from the ability of diverse groups-the Alsatians, the Bretons, and the Provencals in France; the Finns and the Swedes in Finland; the Genoese, the Tuscans, and the Venetians in Italy-to live together. By failing to consider the conflicts that did not happen, Muller may have misunderstood the dynamics of those that did. Of course, ethnic divisions do lead to violent conflict in some instances. Violence may even be so severe that partition is the only workable solution. Yet this extreme response has not been required in most cases in which ethnic divisions have existed. Making sense of when ethnic differences generate conflict-and knowing how best to attempt to prevent or respond to them when they do-requires a deeper understanding of how ethnicity works.

#### No risk of great power conflict over Africa

**Barrett ‘5** Robert Barrett, PhD student Centre for Military and Strategic Studies, University of Calgary, June 1, 2005,

http://papers.ssrn.com/sol3/Delivery.cfm/SSRN\_ID726162\_code327511.pdf?abstractid=726162&mirid=1

Westerners eager to promote democracy must be wary of African politicians who promise democratic reform without sincere commitment to the process. Offering money to corrupt leaders in exchange for their taking small steps away from autocracy may in fact be a way of pushing countries into anocracy. As such, world financial lenders and interventionists who wield leverage and influence must take responsibility in considering the ramifications of African nations who adopt democracy in order to maintain elite political privileges. The obvious reason for this, aside from the potential costs in human life should conflict arise from hastily constructed democratic reforms, is the fact that Western donors, in the face of intrastate war would then be faced with channeling funds and resources away from democratization efforts and toward conflict intervention based on issues of human security. This is a problem, as Western nations may be increasingly wary of intervening in Africa hotspots after experiencing firsthand the unpredictable and unforgiving nature of societal warfare in both Somalia and Rwanda. On a costbenefit basis, the West continues to be somewhat reluctant to get to get involved in Africa’s dirty wars, evidenced by its political hesitation when discussing ongoing sanguinary grassroots conflicts in Africa. Even as the world apologizes for bearing witness to the Rwandan genocide without having intervened, the United States, recently using the label ‘genocide’ in the context of the Sudanese conflict (in September of 2004), hasonly proclaimed sanctionsagainst Sudan, while dismissing any suggestions at actual intervention(Giry, 2005). Part of the problem is that traditional military and diplomatic approachesat separating combatants and enforcing ceasefires have yielded little in Africa. No powerful nations want to get embroiled in conflicts they cannot win– especially those conflicts in which the intervening nation has very little interest.

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#### No impact—no nuclear weapons in Africa

**Omestad ‘9** (Thomas, US News & World Report, “Nuclear Weapons for All?” 1-15, lexis)

And there are successes. Decades ago, a smattering of countries started but then abandoned weapons research efforts. They include such states as Switzerland, Sweden, South Korea, Taiwan, Brazil, and Argentina. Apartheid-era South Africa actually built bombs before dismantling them. Saddam Hussein's Iraq had run an ambitious nuclear weapons research effort before the 1991 Persian Gulf War. And, more recently, a foreign policy triumph during the administration of George W. Bush was the verified, negotiated elimination of Libya's nuclear weapons program. Much of its atomic equipment and materials was shipped from North Africa to U.S. facilities at Oak Ridge, Tenn.

#### African war is inevitable

Martha Mutisi, Lecturer and Staff Development Fellow at the Institute of Peace, Leadership and Governance, at Africa University and Peter Tendaiwo Maregere, Programme Officer with the Centre for Peace Initiatives in Africa, 2006, http://www.accord.org.za/ct/2006-4.htm, p. 18

Since the violent conflicts in Africa reflect the chal- lenges of weak and failed states, the search for security and development should be accompanied by attempts to enable the states to resuscitate and revitalise their governance structures and operational machinery such as the legislature, executive, judiciary and security forces. It is apparent that weak states are in themselves unable to create conditions for stability, security, development and ultimately durable peace. Successful democratisa- tion and development depends to a large extent on state capability and strength. In Africa, the problem of weak and failed states is a reality, with Somalia and Sudan topping the list on the weak states scale. Weak states are not only unstable, they also struggle to address the issues of poverty, unemployment, HIV/AIDS and environ- mental degradation, the major factors in development. Subsequently, this process leads to a “legitimation crisis”, wherein citizens become discontented with the state. Discontented citizens usually choose from an array of options, ways of expressing their disgruntlement. In most cases, the frustration has been manifested through rebellion, riots, crime and coups.

### Hostilties PIC 1NR--From Cody

#### flex in hostilities solves WMD attacks on the US

Yoo 12

John Yoo, law professor at University of California, Berkeley. He was Deputy¶ Assistant Attorney General in the Office of Legal Counsel at the US Department¶ of Justice from 2001 to 2003, “Exercising Wartime Powers,” Harvard International¶ Review28. 1 (Spring 2006): 22-25.

Critics of these conflicts want to upend long practice by appealing to an "original

understanding" of the Constitution. But the text and structure of the Constitution, as well as its application over the¶ last two centuries, confirm that the president can begin military hostilities without the approval of Congress. The Constitution¶ does not establish a strict warmaking process because the Framers understood that war¶ would require the speed, decisiveness, and secrecy thatonly the presidency could bring. "Energy¶ in the executive," Alexander Hamilton argued in the Federalist Papers, "...is essential to the protection of the community against¶ foreign attacks." He continued, "the direction of war most peculiarly demands those qualities which distinguish the exercise of¶ power by a single hand." Rather than imposing a fixed, step-by-step method for going to war, the¶ Constitution allows the executive and legislative branches substantial flexibility in shaping the¶ decisionmaking process for engaging in militaryhostilities. Given the increasing ability of¶ rogue states to procure weapons ofmass destruction (WMDs) and the rise of international¶ terrorism, maintaining this flexibility is critical to preserving US national security.

#### it means we won’t intervene when we should

Jide Nzelibe, Professor, Law, Northwestern University and John Yoo, Professor, Law, UC-Berkeley, “Rational War and Constitutional Design,” YALE LAW JOURNAL v. 115, 2006, LN.

Much of the war powers literature focuses on the concern that the United States might erroneously enter a war in which the expected costs outweigh the expected benefits. Statisticians usually label such errors of commission Type I errors. However, the other side of the coin is just as important. Errors of[\*2518] omission, when the United States does not enter a conflict whose expected benefits outweigh the costs, are called Type II errors and may be just as undesirable as Type I errors. n15 But scholars rarely, if ever, ask whether requiring congressional ex ante approval for foreign wars could increase the likelihood of Type II errors. Legislative control could prevent theUnited States from entering into wars that would advance its foreign policy or national security objectives. The clearest example is World War II. During the inter-war period, Congress enacted several statutes designed to prevent the United States from entering into the wars in Europe and Asia. In 1940 and 1941, President Franklin D. Roosevelt recognized that America's security would be threatened by German control of Europe, and he and his advisers gradually attempted to bring the United States to the assistance of Great Britain and the Soviet Union. n16 Nonetheless, congressional resistance delayed entry into the war and prevented Roosevelt from doing anything more than supplying arms and loans to the Allies and providing partial protection for convoys to Great Britain. In hindsight, most would agree that America's earlier entry into World War II would have benefited both the United States and the world. We must compare the impact of Type I and Type II errors under a Congress-first system with the results of a President-first approach. Presidents may cause the United States to begin wars that appear unnecessary or unwise initially; however, some of these conflicts may look better in hindsight. The Cold War experien

marked

ce, which provides the best examples of major military hostilities conducted without ex ante congressional authorization, does not stand as an unambiguous example of how legislative control promotes institutionaldeliberation and results in better conflict selection. Many of the conflicts, such as Panama and Grenada, ended successfully for the United States. To be sure, the Korean War, which many would consider a draw, did not, but the Korean War may have succeeded in its broader objectives of containing the expansion of communism in East Asia.

## 2NR

**Strong statistical support—interdependence outweighs power transition**

**Hillebrand 10** (Professor of Diplomacy @ University of Kentucky and a Senior Economist for the Central Intelligence Agency, Evan E. Hillebrand, “Deglobalization Scenarios: Who Wins? Who Loses?”, Global Economy Journal, Volume 10, Issue 2)

A long line of writers from Cruce (1623) to Kant (1797) to Angell (1907) to Gartzke (2003) have theorized that economic interdependence can lower the likelihood of war. Cruce thought that free trade enriched a society in general and so made people more peaceable; Kant thought that trade shifted political power away from the more warlike aristocracy, and Angell thought that economic interdependence shifted cost/benefit calculations in a peace-promoting direction. Gartzke contends that **trade relations enhance transparency among nations and** thus **help avoid bargaining miscalculations. There has also been a tremendous amount of empirical research** that mostly supports the idea of an inverse relationship between trade and war. Jack Levy said that, “While there are extensive debates over the proper research designs for investigating this question, and **while some** empirical **studies find** that **trade is associated with international conflict, most studies conclude** that **trade is associated with peace**, both at the dyadic and systemic levels” (Levy, 2003, p. 127). There is another important line of theoretical and empirical work called Power Transition Theory that focuses on the relative power of states and warns that **when rising powers approach the power level of** their regional or **global leader the chances of war increase** (Tammen, Lemke, et al, 2000). Jacek Kugler (2006) warns that **the rising power of China relative to the United States greatly increases the chances of great power war** some time in the next few decades. The IFs model combines the theoretical and empirical work of the peacethrough- trade tradition with the work of the power transition scholars in an attempt to forecast the probability of interstate war. Hughes (2004) explains how he, after consulting with scholars in both camps, particularly Edward Mansfield and Douglas Lemke, estimated the starting probabilities for each dyad based on the historical record, and then forecast future probabilities for dyadic militarized interstate disputes (MIDs) and wars based on the calibrated relationships he derived from the empirical literature. The probability of a MID, much less a war, between any random dyad in any given year is very low, if not zero. Paraguay and Tanzania, for example, have never fought and are very unlikely to do so. But there have been thousands of MIDs in the past and hundreds of wars and many of the 16,653 dyads have nonzero probabilities. In 2005 the mean probability of a country being involved in at least one war was estimated to be 0.8%, with 104 countries having a probability of at least 1 war approaching zero. A dozen countries12, however, have initial probabilities over 3%. The globalization scenario projects that the probability for war will gradually decrease through 2035 for every country—but not every dyad--that had a significant (greater than 0.5% chance of war) in 2005 (Table 6). The decline in prospects for war stems from the scenario’s projections of rising levels of democracy, rising incomes, and rising trade interdependence—all of these factors figure in the algorithm that calculates the probabilities. Not all dyadic war probabilities decrease, however, because of the power transition mechanism that is also included in the IFs model. **The probability for war between China and the US, for example rises as China’s power13 rises gradually toward the US level but in these calculations the probability of a China/US war never gets very high.**14 Deglobalization raises the risks of war substantially. In a world with much lower average incomes, less democracy, and less trade interdependence, the average probability of a country having at least one war in 2035 rises from 0.6% in the globalization scenario to 3.7% in the deglobalization scenario. Among the top-20 war-prone countries, the average probability rises from 3.9% in the globalization scenario to 7.1% in the deglobalization scenario. The model estimates that in the deglobalization scenario there will be about 10 wars in 2035, vs. only 2 in the globalization scenario15. Over the whole period, 2005-2035, the model predicts four great power wars in the deglobalization scenario vs. 2 in the globalization scenario. Deglobalization in the form of reduced trade interdependence, reduced capital flows, and reduced migration has few positive effects, based on this analysis with the International Futures Model. Economic growth is cut in all but a handful of countries, and is cut more in the non-OECD countries than in the OECD countries. Deglobalization has a mixed impact on equality. In many non-OECD countries, the cut in imports from the rest of the world increases the share of manufacturing and in 61 countries raises the share of income going to the poor. But since average productivity goes down in almost all countries, this gain in equality comes at the expense of reduced incomes and increased poverty in almost all countries. The only winners are a small number of countries that were small and poor and not well integrated in the global economy to begin with—and the gains from deglobalization even for them are very small. Politically, **deglobalization makes for less stable domestic politics and a greater likelihood of war.** **The likelihood of state failure through internal war, projected to diminish through 2035 with increasing globalization, rises in the deglobalization scenario particularly among** the non-OECD **democracies**. Similarly, **deglobalization makes for more fractious relations among states and the probability for interstate war rises.**

**Chinese leaders are pragmatic**

**Goldstein 11—**professor emeritus of IR, American U. PhD in pol sci from MIT. Former visiting professor emeritus at Yale (Sept 2011, Joshua, Think Again: War, http://www.foreignpolicy.com/articles/2011/08/15/think\_again\_war)

What about China, the most ballyhooed rising military threat of the current era? **Beijing is** indeed **modernizing its armed forces**, racking up double-digit rates of growth in military spending, now about $100 billion a year. That is second only to the United States, but it is a distant second: The Pentagon spends nearly $700 billion. **Not only is China a very long way from beingable to go toe-to-toe with the UnitedStates; it's not clear why it would want to. A military conflict** (particularly **with its biggest customer** and debtor) **would impede China's global trading posture and endanger its prosperity. Since** Chairman **Mao's death, China has been hands down the most peaceful great power of its time**. **For all the recent concern about a newly assertive Chinese navy indisputed** international **waters, China's military hasn't fired a single shot in battle in 25 years.** "A More Democratic World Will Be a More Peaceful One." Not necessarily. The well-worn observation that real democracies almost never fight each other is historically correct, but it's also true that democracies have always been perfectly willing to fight non-democracies. In fact, democracy can heighten conflict by amplifying ethnic and nationalist forces, pushing leaders to appease belligerent sentiment in order to stay in power. Thomas Paine and Immanuel Kant both believed that selfish autocrats caused wars, whereas the common people, who bear the costs, would be loath to fight. But try telling that to **the leaders of authoritarian China**, who **are strugglingto hold in check, not inflame, a popular undercurrent of nationalism** against Japanese and American historical enemies. Public opinion in tentatively democratic Egypt is far more hostile toward Israel than the authoritarian government of Hosni Mubarak ever was (though being hostile and actually going to war are quite different things).

**Their nuclear escalation claim is empirically denied by dozens of African conflicts**

**Docking ‘7** Tim Docking, African Affairs Specialist with the United States Institute of Peace, 2007, Taking Sides Clashing

Views on African Issues, p. 372

**Nowhere was the scope and intensity of violence during the** 19**90s as great as in Africa**. While the general trend of armed conflict in Europe, Asia, the Americas, and the Middle East fell during the 1989-99 period, **the 1990s witnessed an increase in the number of conflicts on the African continent. During this period, 16 UN peacekeeping missions were sent to Africa**. (Three countries-Somalia, Sierra Leone, and Angola-were visited by multiple missions during this time.) Furthermore, this period saw internal and interstate violence in a total of 30 sub-Saharan states. **In** 19**99** **alone, the continent was plagued by 16 armed conflicts, seven of which were wars with more than 1,000 battle-related deaths** (Journal of Peace Research, 37:5, 2000, p. 638). **In 2000, the situation continued to deteriorate: renewed heavy fighting between Eritrea and Ethiopia claimed tens of thousands of lives** in the lead-up to a June ceasefire and ultimately the signing of a peace accord in December; continued violence in the Democratic Republic of Congo (DRC), Sierra Leone, Burundi, Angola, Sudan, Uganda, and Nigeria as well as the outbreak of new violence between Guinea and Liberia, in Zimbabwe, and in the Ivory Coast have brought new hardship and bloodshed to the continent.

**And, African conflict won’t draw in others**

**Taire ‘4** (Morenike, April 9, Vanguard (Nigeria), Global News Wire – Asia Africa Intelligence Wire, p. Lexis)

Defining our role may not have to be as difficult as it might first seem. In the first instance, **in spite of Libya feat in WMD technology,** borrowed and invented, and despite the feat of others who, like Libya, has flirted and romanced with terrorism in the past, **it is unlikely that Africa would be in a position to involve itself in any conflicts with** any **States outside its own shores. She does not have the technology, and might have trouble summoning the collective will.** And so while America grapples with impending energy troubles or rumours of it and Europe battles with the European Union, **Africa** battles with hunger, and pretty much everything else that **has ceased to be of any significance to anyone in the first world.** It was Sting, appropriately enough, who’d coined the lyrics and sang the song: “We have just one world, but we live in different ones”. Indeed, we do. Unfortunately, we live, also, in perpetual danger of being sucked into the faster, more complicated vortex of the worlds of others. We can no longer be calm, cool and collected.